egos of Petitioners (as Comerica alleged). Petition, at App. 6-7. Rather, the trial court based its ruling on Petitioners' own *direct* contact with California, stating that Petitioners had "*sufficient contacts to exercise at least 'specific jurisdiction' over these defendants.*" *Id.* (emphasis added). Despite this unambiguous ruling and the allegations of the Complaint, the Petition repeatedly states that the trial court's ruling was not based on Petitioners' direct contact with California. *See, e.g.*, Petition, at pp. 12, 14, 16, 20, 22. These misstatements are misleading at best and should be disregarded.

7. In paragraph A of their Statement of Reasons for Granting the Writ ("Summary of Argument"), Petitioners state that "*the sole basis for jurisdiction in California emanates from the jurisdiction and venue provisions included in the bank's loan and security agreements, but Petitioners are not parties to any of those agreements.*" Petition, at p. 13. Once again, Petitioners are reading findings into the trial court's minute order that simply are not there.

It is undisputed that Howsam personally signed all the loan documents on behalf of the SPEs, including the Loan and Security Agreements ("LSAs"), which provide that the parties consent to the application of California law, to jurisdiction in California, and to venue in the Los Angeles County Superior Court. In all instances, the SPEs were owned by Petitioners or by entities that they owned and/or controlled. App. at pp. 89-91: Carpenter Decl., ¶¶9-10. It is also undisputed, however, that Howsam – an officer of Greenlight – personally came to California to negotiate the loans. App. at p. 100. Thus, the SPE contracts were not the "sole" basis on which the trial court

could have exercised personal jurisdiction of Petitioners in this case.

IV.

CONCLUSION

As set forth above, it is undisputed that the trial court applied the proper minimum contacts analysis in exercising personal jurisdiction over Petitioners in this case. Moreover, Petitioners misrepresent the record below, as set forth in this opposition. Even if this Court finds that it would have ruled differently, the Petition should be denied. *See* Supreme Court Rule 10. Accordingly, Comerica respectfully requests that certiorari be denied and that no briefing schedule be set in this matter.

Respectfully submitted,

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DATED: September 19, 2005

APPENDIX

Page

Appendix A

First Amended Complaint of Comerica Bank.....App. 1

Appendix B

Opposition of Comerica Bank to Motion of Defendants Gary Howsam and Greenlight Film and Television, Inc., to Quash Service of Summons for Lack of Personal Jurisdiction.....App. 47

Appendix C

Declaration of Robert S. Addison, Jr., in Support of Opposition of Comerica Bank to Motion of Defendants Gary Howsam and Greenlight Film and Television, Inc., to Quash Service of Summons for Lack of Personal Jurisdiction .....App. 69

Appendix D

Declaration of Carmen E. Carpenter in Support of Opposition of Comerica Bank to Motion of Defendants Gary Howsam and Greenlight Film and Television, Inc., to Quash Service of Summons for Lack of Personal Jurisdiction .....App. 85

Appendix E

Declaration of Raymond F. Gross in Support of Opposition of Comerica Bank to Motion of Defendants Gary Howsam and Greenlight Film and Television, Inc., to Quash Service of Summons for Lack of Personal Jurisdiction.....App. 98

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Attorneys for Plaintiff
COMERICA BANK, a Michigan Banking Corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

COMERICA BANK, a Michigan Banking Corporation,

Plaintiff,

vs.

GARY HOWSAM, an individual; GFT ENTERTAINMENT, INC., an Ontario corporation, also known as GFTE, INC., and successor to GREENLIGHT FILM AND TELEVISION, INC. D/B/A/ GFT ENTERTAINMENT; GREENLIGHT FILM AND TELEVISION, INC. D/B/A/ GFT ENTERTAINMENT, an Ontario Corporation; GFT CIRCLE

CASE NO. BC316406

FIRST AMENDED COMPLAINT

1. **Breach of Written Contract;**
2. **Fraud and Deceit;**
3. **Conspiracy to Defraud;**
4. **Fraudulent Inducement;**
5. **Accounting;**
6. **Money Had and Received;**
7. **Account Stated; and,**
8. **Open Book Account.**

FILMS, INC., an Ontario Corporation; ROAD RAGE FILMS, INC., a Corporation of unknown origin; JANUS PRODUCTIONS, INC., a Quebec Corporation; GFT GOING BACKFILMS, INC., an Ontario Corporation; GFT HERESY FILMS, INC., an Ontario Corporation; GFT/REDWOOD KOTN FILMS, INC., a British Columbia Corporation; GFT/REDWOOD IGNITION FILMS, INC., a British Columbia Corporation; ADAM BENNECKE, an individual; MICHEL GLOCKLER, an individual; and DOES 1 through 100, inclusive,

Defendant.

Plaintiff COMERICA BANK ("Comerica") alleges as follows:

I.

PARTIES, JURISDICTION, AND VENUE

Parties

1. Comerica is a Michigan banking corporation, licensed to do business in California.

2. On information and belief, Comerica alleges that defendant Gary Howsam ("Howsam") is an individual

residing in Toronto, Ontario, Canada, and is in the business of producing and licensing rights in and to motion pictures.

3. On information and belief, Comerica alleges that defendant Mishel Glockler ("Glockler") is an individual residing in Los Angeles County, California.

4. On information and belief, Comerica alleges that defendant Adam Bennecke ("Bennecke") is an individual residing in Los Angeles County, California, and at all relevant times herein was an employee of Comerica.

5. On information and belief, Comerica alleges that defendant Greenlight Film and Television, Inc. D/B/A GFT Entertainment ("Greenlight"), is an Ontario corporation authorized to do business in California.

6. On information and belief, Comerica alleges that defendant GFT Entertainment, Inc. ("GFT"), is an Ontario corporation authorized to do business in California, and is the successor to Greenlight.

7. On information and belief, Comerica alleges that defendant GFT Circle Films, Inc. ("GFT-Circle") is an Ontario corporation. On information and belief, Comerica alleges that GFT Circle was formed, organized and operated by Howsam, and/or entities formed and operated by Howsam, for the sole and limited purpose of producing and licensing rights to the motion picture entitled "The Circle."

8. On information and belief, Comerica alleges that defendant Road Rage Films, Inc. ("Road Rage") is a corporation of unknown origin. On information and belief, Comerica alleges that Road Rage was formed, organized and operated by Howsam, and/or entities formed and operated by Howsam, for the sole and limited purpose of

producing and licensing rights to the motion picture entitled "Road Rage."

9. On information and belief, Comerica alleges that defendant Janus Productions, Inc. ("Janus") is a Quebec corporation. On information and belief, Comerica alleges that Janus was formed, organized and operated by Howsam, and/or entities formed and operated by Howsam, for the sole and limited purpose of producing and licensing rights to the motion picture entitled "*Deception*."

10. On information and belief, Comerica alleges that defendant GFT Going Back Films, Inc. ("GFT-Going Back") is an Ontario corporation. On information and belief, Comerica alleges that GFT-Going Back was formed, organized and operated by Howsam, and/or entities formed and operated by Howsam, for the sole and limited purpose of producing and licensing rights to the motion picture entitled "Going Back."

11. On information and belief, Comerica alleges that defendant GFT Heresy Films, Inc. ("GFT-Heresy") is an Ontario corporation. On information and belief, Comerica alleges that GFT-Heresy was formed, organized and operated by Howsam, and/or entities formed and operated by Howsam, for the sole and limited purpose of producing and licensing rights to the motion picture entitled "Global Heresy."

12. On information and belief, Comerica alleges that defendant GFT/Redwood KOTN Films, Inc. ("GFT-KOTN") is a British Columbia corporation. On information and belief, Comerica alleges that GFT-KOTN was formed, organized and operated by Howsam, and/or entities formed and operated by Howsam, for the sole and limited

purpose of producing and licensing rights to the motion picture entitled "Kevin of the North."

13. On information and belief, Comerica alleges that defendant GFT/Redwood Ignition Films, Inc. ("GFT-Ignition") is a British Columbia corporation. On information and belief, Comerica alleges that GFT-Ignition was formed, organized and operated by Howsam, and/or entities formed and operated by Howsam, for the sole and limited purpose of producing and licensing rights to the motion picture entitled "Ignition."

14. Comerica is currently unaware of the true names and capacities of defendants sued herein as Does 1 through 100, inclusive, and therefore sues said Doe defendants by such fictitious names. Comerica will seek leave of this Court to amend this complaint to insert the true names and capacities of said Doe defendants when such information has been obtained. Comerica is further informed and believes and based thereon alleges that each of such fictitiously named defendants has participated in some way in the wrongful acts and omissions alleged below, and is liable to Comerica for damages and other relief to which it is entitled.

Successor Liability of GFT

15. On information and belief, Comerica alleges that Defendant GFT was created by Howsam as part of a scheme to escape liability for the actions of Defendant Greenlight (detailed below), and to simply continue Greenlight's business, but under a new name. For these, and possibly other, reasons, GFT, as Greenlight's successor, is liable for Greenlight's wrongful actions alleged herein. Therefore, even though Comerica is informed and

believes that GFT was not incorporated until after most or all of the wrongful actions at issue in this case, the allegations contained herein include GFT as if it *had* been incorporated at the time of the actions.

The "Howsam Parties"

16. For the reasons set forth in paragraph 15, above, Howsam, Greenlight, GFT, GFT-Circle, Road Rage, Janus, GFT-Going Back, GFT Heresy, GFT-KOTN, GFT-Ignition, and/or their agents and assigns, are hereinafter sometimes collectively referred to as the "Howsam Parties." On information and belief, Comerica alleges that the Howsam Parties are, individually and jointly, and at all times material hereto have been owned, controlled or otherwise dominated by Howsam. Comerica is further informed and believes and based thereon alleges that, at all times relevant hereto, the Howsam Parties, and each of them, was the agent, partner or other representative of the remaining Howsam Parties, and completely controlled, dominated and operated the Howsam Parties, and at all times mentioned herein was acting within the course and scope of that agency, partnership or representation. Comerica is further informed and believes and based thereon alleges that the acts and conduct of each of the Howsam Parties as alleged herein were known to, authorized by, and/or ratified by the other Howsam Parties, and each of them.

17. On information and belief, Comerica alleges that there now exists, and at all times material hereto has existed, such a unity of ownership, interest and control between the Howsam Parties, on the one hand, and Howsam, on the other hand, that any individuality or

separateness which may have existed between the Howsam Parties, on the one hand, and Howsam, on the other hand, has ceased. The Howsam Parties are the alter egos of Howsam in that Howsam has completely controlled, dominated, managed and operated the Howsam Parties, and has used those entities as mere shells or conduits through which to carry on his own business, including engaging in the acts and/or omissions set forth herein. Adherence to the fiction of the separate existence of the Howsam Parties, on the one hand, and Howsam, on the other hand, would permit an abuse of corporate privilege and would sanction fraud and promote injustice. The Howsam Parties and Howsam are consequently jointly and severally liable to Comerica for the conduct, or lack of conduct, of each other with respect to the obligations and omissions as hereafter alleged.

Jurisdiction and Venue

18. The Court has jurisdiction over the Howsam Parties pursuant to the express agreement by the Howsam Parties in the Loan and Security Agreements for each film at issue in this case, and based upon the fact that these Defendants have done and/or do business regularly in the State of California and, therefore, have sufficient contacts with California to give rise to jurisdiction of California courts over them.

19. This Court additionally has jurisdiction over Bennecke and Glockler, as they are both residents of the State of California.

20. Venue is proper in this Court pursuant to the express agreement by the Howsam Parties in the Loan and Security Agreements for each of the films at issue in

this action, as well as due to the fact that a substantial part of the events or omissions giving rise to this action occurred in Los Angeles County, and the fact that one or more of the defendants reside in this district.

II.

INTRODUCTION AND SUMMARY

21. This case arises out of a group, or "slate," of 7 films produced in 2000 and 2001 by the Howsam Parties, who were and are independent film producers. The films at issue include but are not limited to: *Deception, Going Back, Kevin of the North, Global Heresy, The Circle, Road Rage*, and *Ignition* (collectively, the "Films").

22. Based on the methods described below, Comerica provided secured financing to the Howsam parties to enable the production of the Films. These loan obligations (the "Production Loans") were secured by, among other things, the Films, and all proceeds and revenue derived from the Films. Comerica's primary collateral, from which it contemplated sufficient funds would be generated to repay the Production Loans, was licensing fees from foreign distributors, who would guarantee payment of such fees prior to a given film's production. As part of the loan agreements between the Howsam Parties and Comerica, the Howsam Parties purportedly obtained license agreements from a number of distributors, along with assignments of the guaranteed licensing fees to Comerica. Comerica relied on these license agreements and assignments in making the Production Loans.

23. The true facts were, however, that the Howsam Parties, Bennecke, and Glockler created ***fraudulent***

license agreements and assignments, and provided them to Comerica in order to induce Comerica to provide loans on the Films. The license agreements and assignments were fraudulent in that these Defendants either forged or affixed signatures upon numerous License Agreements and Notices and Acknowledgments of Assignment ("NOAs"), in an attempt to create the impression that License Agreements and NOAs were executed. In furtherance of the conspiracy, the Howsam Parties created falsely inflated production budgets in order to increase sales and/or license fees and other collateral, including tax credits and ultimately increased the amount of each Production Loan through their fraud.

24. As a direct result of these Defendants' actions, Comerica loaned money to produce the Films, was never repaid the full amount of the loans, and was left with inadequate or false security from which to seek repayment. Consequently, Comerica has been damaged in an amount in excess of $20 Million.

III.

DETAILS OF THE FINANCING OF THE FILMS

25. As independent producers, and unlike a movie studio, the Howsam Parties did not have significant capital of their own to fund production of a movie, nor did they possess collateral that would allow them to borrow the money necessary to fund production of a movie. Furthermore, like most film-finance banks, Comerica will not loan money to make a movie unless there is sufficient collateral to ensure repayment, even in the event the movie is a box office failure. Therefore, like many independent film producers, the Howsam Parties utilized a

financing arrangement by which they would provide collateral to Comerica in the form of guaranteed minimum license fees ("Minimum Guarantees") from international distributors. Minimum Guarantees are, essentially, license fees owed to a producer by a distributor for the right to distribute a given film in a particular geographic region and through specified media. To obtain a loan from Comerica, the Howsam Parties would pre-sell the distribution rights to the films to various distributors around the world, who would promise to pay Minimum Guarantees, so long as the movies were actually completed and delivered for distribution.

26. Distributors typically purchase these rights in advance of commencement of a movie's production. The purchase transaction involves the distributor signing a License Agreement, in which it guarantees it will pay the producer for the distribution rights to a film upon delivery of the completed film. "Delivery" is a defined term, which specifically defines what the producer must do to "deliver" the film and trigger the distributor's obligation to pay the license fees. Comerica requires borrowers to purchase a completion bond, which ensures that, if Comerica funds a loan, the film will actually be completed and delivered. Once the producer has obtained sufficient collateral, as described above, to cover most of the expected negative costs of production, Comerica will make the loan.

27. Furthermore, in order to ensure that the Minimum Guarantees were ultimately paid to Comerica, and not diverted by the Howsam Parties, the distributors were required to sign NOAs, acknowledging that, upon delivery of the film, the distributor would pay the Minimum Guarantees directly to Comerica, rather than to the Howsam Parties.

28. The borrowers for each production were single purpose entities ("SPEs"), created and controlled by Howsam, in connection with each particular motion picture. For each loan, Howsam executed a Loan and Security Agreement ("LSA"), an Interparty Agreement, and other related agreements evidencing the loan obligations.

29. Hilltop Entertainment, LLC ("Hilltop"), by whom defendant Glockler was employed, acted as the sales agent for the Howsam Parties in connection with the Films. In that capacity, Hilltop, on behalf of the Howsam Parties, in instances purported to enter into License Agreements (also referred to hereinafter as "Distribution Agreements") and NOAs with various distributors.

IV.

THE DEFENDANTS' WRONGDOING

30. In order for Comerica to loan money for the production of the Films, the Howsam Parties were required to provide the collateral described above. Working with Glockler and Bennecke, the Howsam Parties delivered License Agreements and NOAs, which they represented to Comerica were executed by the relevant distributors, and were thus legitimate. Comerica is informed and believes, however the true facts were that the Howsam Parties, Bennecke, and Glockler created and delivered ***fraudulent*** License Agreements and NOAs by either forging or affixing signatures upon numerous License Agreements and NOAs, in an attempt to create the impression that distribution agreements and assignments of Minimum Guarantees were in place. These Defendants created these false documents with full

knowledge that they would induce Comerica to rely on them as collateral and to make the Production Loans.

31. In reality, the purported Distribution Agreements did not exist. The distributors who were the purported parties to the various agreements have informed Comerica that they did not enter into the purported agreements bearing their names on such documents.

32. Based upon these defendants' actions, Comerica was led to believe that distribution rights were pre-sold to international distributors, that the Howsam Parties had assigned the Minimum Guarantees to Comerica, and that those distributors had promised to pay the Minimum Guarantees directly to Comerica as collateral. Comerica relied upon the Minimum Guarantees in making the Production Loans and was thereon induced to make the loans. Had Comerica been aware of the actual facts surrounding the License Agreements and NOAs, Comerica would not have made the Production Loans. Since Comerica made the Production Loans with insufficient collateral to secure repayment, and since those loans have not been repaid as agreed by the Howsam Parties, Comerica has been damaged in excess of $20 Million.

33. Furthermore, Comerica is informed and believes that the Howsam Parties provided Comerica with budgets that over-estimated the funds needed to complete the relevant Films. As a result, the Howsam Parties were able to "skim" money out of the loan proceeds, which were never used to make the Films, in violation of the various bond agreements, and which were never repaid to Comerica.

34. Further specifics of the Defendants' wrongful actions with regard to each of the Films are as follows:

A. Deception

Loan Agreement, Interparty Agreement, and Sales Agency Agreement

35. Howsam established and controlled Janus Productions Inc. ("Janus") for the purpose of producing the motion picture *Deception*.

36. Howsam, through Janus, entered into a Loan and Security Agreement and an Interparty Agreement, both of which were dated November 27, 1999, with Comerica for the purpose of borrowing up to $1,775,000 for the production of *Deception* (these agreements are referred to collectively as the "Deception Loan Agreement"). Copies of the Loan and Security Agreement and Interparty Agreement are attached hereto as Exhibits "A" and "B," respectively, and are incorporated herein by this reference. As security for the obligations under the Deception Loan Agreement, Howsam and Janus pledged all of their interest, rights and title to *Deception* and any and all proceeds generated therefrom to Comerica.

37. Howsam, through Janus, entered into a Sales Agency Agreement with Hilltop, dated October 19, 1999, pursuant to which Janus Productions appointed Hilltop as its sales agent for the purpose of entering into license agreements for the exploitation of *Deception* in certain territories.

Forged License Agreements and Notices of Assignment.

Tele-Munchen

38. On or about on September 9, 1999, Howsam, through Janus, entered into a license agreement, with

Tele-Munchen Fernseh GmbH & Co. Produktiongesellschaft, a German corporation ("Tele-Munchen"), whereby Tele-Munchen purchased the right to exploit *Deception* within German-Speaking Europe in exchange for the payment of $250,000 by Tele-Munchen.

39. For the purposes of inducing Comerica to enter into the Deception Loan Agreement, Howsam, through Janus, purported to enter into an undated NOA agreement with Tele-Munchen, which appeared to assign the payment of a Minimum Guarantee in the amount of $250,000 by Tele-Munchen, to Comerica ("Deception Tele-Munchen NOA"). The Deception Tele-Munchen NOA contained a forged signature as it was not signed by Herbert Kloiber or anyone else authorized to sign on behalf of Tele-Munchen.

Videx International S.A.

40. On or about December 3, 1999, Howsam, through Janus, purported to enter into a license agreement with Videx International S.A. ("Videx") whereby Videx purported to purchase the right to exploit *Deception* within the territories of Mexico, Central America, Dominican Republic, Puerto Rico, Caribbean Island, and South America including Brazil in exchange for the payment of $100,000 by Videx ("Deception Videx License Agreement").

41. On or about December 3, 1999, in conjunction with the Deception Videx License Agreement, Howsam, through Janus, purported to enter into an NOA agreement with Videx, which appeared to assign the payment of a Minimum Guarantee in the amount of $100,000 by Videx, to Comerica ("Deception Videx NOA") (the Deception Videx License Agreement and the Deception Videx NOA shall hereafter be collectively referred to as the "Deception

Videx Distribution Agreements"). The Deception Videx Distribution Agreements were forged since they were not signed by Cynthia Murray or anyone else authorized to sign on behalf of Videx.

B. Going Back

Loan Agreement, Interparty Agreement, and Sales Agency Agreement

42. Howsam established and controlled GFT Going Back Films, Inc. ("GFT-Going Back") for the purpose of producing the motion picture *Going Back*.

43. Howsam, through GFT-Going Back, entered into a Loan and Security Agreement and an Interparty Agreement, both of which were dated April 7, 2000, with Comerica, for the purpose of borrowing up to $4,764,000 for the production of *Going Back* (these agreements are collectively referred to as the "Going Back Loan Agreement"). Copies of the Loan and Security Agreement and Interparty Agreement are attached hereto as Exhibits "C" and "D," respectively. As security for the obligations under the Going Back Loan Agreement, Howsam and GFT-Going Back, pledged all of their interest, rights and title to *Going Back* and any and all proceeds generated therefrom to Comerica.

44. Howsam, through GFT-Going Back, entered into a Sales Agency Agreement with Hilltop, dated March 6, 2000, pursuant to which Howsam, through GFT-Going Back, granted to Hilltop their distribution rights in and to *Going Back* for certain territories.

Forged License Agreements and Notices of Assignment

Eagle Pictures (Italy)

45. On or about March 30, 2000, Howsam, through GFT-Going Back, purported to enter into a license agreement with Eagle Pictures SPA ("Eagle Pictures"), whereby Eagle Pictures appeared to purchase the right to exploit *Going Back* within Italy in exchange for the payment of $450,000 by Eagle Pictures ("Going Back Eagle Pictures License Agreement").

46. On or about March 29, 2000, in conjunction with the Going Back Eagle Pictures License Agreement, Howsam, through GFT-Going Back, purported to enter into an NOA agreement with Eagle Pictures, which appeared to assign the payment of a Minimum Guarantee in the amount of $450,000 by Eagle Pictures, to Comerica ("Going Back Eagle Pictures NOA") (the Going Back Eagle Pictures License Agreement and the Going Back Eagle Pictures NOA shall hereafter be collectively referred to as the "Going Back Eagle Pictures Distribution Agreements"). The Going Back Eagle Pictures Distribution Agreements were forged since they were not signed by Stefano Dammicco or anyone else on behalf of Eagle Pictures.

Tele-Munchen

47. On or about April 3, 2000, Howsam, through GFT-Going Back, purported to enter into a license agreement with Tele-Munchen, whereby Tele-Munchen appeared to purchase the right to exploit *Going Back* on the terms set forth therein in exchange for the payment of $850,000 by Tele-Munchen ("Going Back Tele-Munchen License Agreement").

48. On or about April 5, 2000, in conjunction with the Going Back Tele-Munchen License Agreement, Howsam, through GFT-Going Back, purported to enter into an NOA agreement with Tele-Munchen, which purported to assign the payment of a Minimum Guarantee in the amount of $850,000 by Tele-Munchen, to Comerica ("Going Back Tele-Munchen NOA") (the Going Back Tele-Munchen License Agreement and the Going Back Tele-Munchen NOA shall hereafter be collectively referred to as the "Going Back Tele-Munchen Distribution Agreements"). The Going Back Tele-Munchen Distribution Agreements were forged since they were not signed by Herbert Kloiber or anyone else authorized to sign on behalf of Tele-Munchen.

Television Francaise 1

49. On or about April 3, 2000, Howsam, through GFT-Going Back, purported to enter into a license agreement with Television Francaise 1 ("TF-1"), whereby TF-1 appeared to purchase the right to exploit *Going Back* within the territories of France and French-Speaking Benelux in exchange for the payment of $550,000 by TF-1 ("Going Back TF-1 License Agreement").

50. On or about April 7, 2000, in conjunction with the Going Back TF-1 License Agreement, Howsam, through GFT-Going Back, purported to enter into an NOA agreement with TF-1, which appeared to assign the payment of a Minimum Guarantee in the amount of $550,000 by TF-1, to Comerica ("Going Back TF-1 NOA") (the Going Back TF-1 License Agreement and the Going Back TF-1 NOA shall hereafter be collectively referred to as the "Going Back TF-1 Distribution Agreements"). The

Going Back TF-1 Distribution Agreements were forged since they were not signed by Fabrice Bailly or anyone else authorized to sign on behalf of TF-1.

Filmax Communications

51. On or about March 29, 2000, Howsam, through GFT-Going Back, purported to enter into a license agreement with Sociedad General De Derechos Audiovisuales, S.A. (Sogedasa) ("Sogedasa"), owner of all rights related to the name Filmax, under the name Filmax Communications ("Filmax"), whereby Filmax agreed to purchase the right to exploit *Going Back* within Spain in exchange for the payment of $350,000 by Filmax ("Going Back Filmax License Agreement").

52. On or about March 29, 1999, in conjunction with the Going Back Filmax License Agreement, Howsam, through GFT-Going Back, purported to enter into an NOA agreement with Filmax, which appeared to assign the payment of a Minimum Guarantee in the amount of $350,000 by Filmax, to Comerica ("Going Back Filmax NOA") (the Going Back Filmax License Agreement and the Going Back Filmax NOA shall hereafter be collectively referred to as the "Going Back Filmax Distribution Agreements"). The Going Back Filmax Distribution Agreements were forged since they were not signed by Carlos Fernandez or anyone else authorized to sign on behalf of Sogedasa or Filmax.

C. Kevin of the North

Loan Agreement, Interparty Agreement, and Sales Agency Agreement

53. Howsam established and controlled GFT/ Redwood KOTN Films, Inc. ("GFT-KOTN") for the purpose of producing the motion picture *Kevin of the North*.

54. Howsam, through GFT-KOTN, entered into a Loan and Security Agreement and an Interparty Agreement, both of which were dated May 30, 2000, with Comerica for the purposes of borrowing $10,428,000 for the production of *Kevin of the North* (these agreements are collectively referred to as the "KOTN Loan Agreement"). Copies of the Loan and Security Agreement and Interparty Agreement are attached hereto as Exhibits "E" and "F," respectively. As security for the KOTN Loan Agreement, Howsam and GFT-KOTN pledged all of their interest, rights and title to *Kevin of the North* and any and all proceeds generated therefrom to Comerica.

55. Howsam, through GFT-KOTN, entered into a Sales Agency Agreement with Hilltop, dated April 28, 2000, pursuant to which Howsam, through GFT-KOTN, appointed Hilltop as the sales agent for the purposes of entering into license agreements for exploitation of *Kevin of the North* in all territories of the world except for the United States, Canada, the United Kingdom, France, Germany, Benelux, Greece and Eastern Europe, among others.

Forged License Agreements and Notices of Assignments

Dall'Angelo Pictures

56. On or about May 14, 2000, Howsam, through GFT-KOTN, purported to enter into a license agreement with Dall'Angelo Pictures ("Dall'Angelo"), whereby Dall'Angelo appeared to purchase the right to exploit *Kevin of the North* within the territories of Italy, San Marino, Vatican City, Italian Speaking Switzerland, among others, in exchange for the payment of $700,000 by Dall'Angelo ("KOTN Dall'Angelo License Agreement").

57. On or about June 1, 2000, in conjunction with the KOTN Dall'Angelo License Agreement, Howsam, through GFT-KOTN, purported to enter into an NOA agreement with Dall'Angelo, which appeared to assign the payment of a Minimum Guarantee in the amount of $700,000 by Dall'Angelo, to Comerica ("KOTN Dall'Angelo NOA") (the KOTN Dall'Angelo License Agreement and the KOTN Dall'Angelo NOA shall hereafter be collectively referred to as the "KOTN Dall'Angelo Distribution Agreements"). The KOTN Dall'Angelo Distribution Agreements were forged since they were not signed by Barbara Dall'Angelo, or any other Dall'Angelo representative authorized to sign on behalf of Dall'Angelo.

D. Global Heresy

Loan Agreement, Interparty Agreement, and Sales Agency Agreement

58. Howsam established and controlled GFT Heresy Films, Inc. ("GFT-Heresy") for the purpose of producing the motion picture *Global Heresy*.

59. Howsam, through GFT-Heresy, entered into a Loan and Security Agreement and an Interparty Agreement, both of which were dated October 10, 2000, with Comerica for the purposes of borrowing up to $4,425,000 for the production of *Global Heresy* (these agreements are collectively referred to as the "Global Heresy Loan Agreement"). Copies of the Loan and Security Agreement and Interparty Agreement are attached hereto as Exhibits "G" and "H," respectively. As security for the loan obligations, Howsam and GFT-Heresy pledged all of their interest, rights and title to *Global Heresy* and any and all proceeds generated therefrom to Comerica.

60. Howsam, through GFT-Heresy, entered into a Sales Agency Agreement with Hilltop, dated September 15, 2000, pursuant to which Howsam, through GFT-Heresy, appointed Hilltop as the sales agent for the purposes of entering into license agreements for exploitation of *Global Heresy* in all territories of the world except for the United States, Canada and the United Kingdom.

Forged License Agreements and Notice of Assignment

Eagle Pictures (Italy)

61. On or about September 2, 2000, Howsam, through GFT-Heresy, purported to enter into a license agreement with Eagle Pictures, whereby Eagle Pictures appeared to purchase the right to exploit *Global Heresy* within Italy in exchange for the payment of $600,000 by Eagle Pictures ("Global Heresy Eagle Pictures License Agreement").

62. On or about October 12, 2000, in conjunction with the Global Heresy Eagle Pictures License Agreement,

Howsam, through GFT-Heresy, purported to enter into an NOA agreement with Eagle Pictures, which appeared to assign the payment of a Minimum Guarantee in the amount of $600,000 by Eagle Pictures, to Comerica ("Global Heresy Eagle Pictures NOA") (the Global Heresy Eagle Pictures License Agreement and the Global Heresy Eagle Pictures NOA shall hereafter be collectively referred to as the "Global Heresy Eagle Pictures Distribution Agreements"). The Global Heresy Eagle Pictures Distribution Agreements were forged since they were not signed by Stefano Dammicco or anyone else authorized to sign on behalf of Eagle Pictures.

Tele-Munchen

63. On or about October 12, 2000, Howsam, through GFT-Heresy, purported to enter into a license agreement with Tele-Munchen, whereby Tele-Munchen appeared to purchase the right to exploit *Global Heresy* on the terms set forth therein in exchange for the payment of $800,000 by Tele-Munchen ("Global Heresy Tele-Munchen License Agreement").

64. On or about October 12, 2000, in conjunction with the Global Heresy Tele-Munchen License Agreement, Howsam, through GFT-Heresy, purported to enter into an NOA agreement with Tele-Munchen, which appeared to assign the payment of a Minimum Guarantee in the amount of $800,000 by Tele-Munchen, to Comerica ("Global Heresy Tele-Munchen NOA") (the Global Heresy Tele-Munchen License Agreement and the Global Heresy Tele-Munchen NOA shall hereafter be collectively referred to as the "Global Heresy Tele-Munchen Distribution

Agreements"). The Global Heresy Tele-Munchen Distribution Agreements were forged since they were not signed by Herbert Kloiber or anyone else authorized to sign on behalf of Tele-Munchen.

Hellas World International S.A.

65. On or about October 4, 2000, Howsam, through GFT-Heresy, purported to enter into a license agreement with Hellas World International S.A. ("Hellas World"), whereby Hellas World appeared to purchase the right to exploit *Global Heresy* within the territories of Greece and Cyprus in exchange for the payment of $15,000 by Hellas World ("Global Heresy Hellas World License Agreement").

66. On or about October 4, 2000, in conjunction with the Global Heresy Hellas World License Agreement, Howsam, through GFT-Heresy, purported to enter into an NOA agreement with Hellas World, which appeared to assign the payment of a Minimum Guarantee in the amount of $15,000 by Hellas World, to Comerica ("Global Heresy Hellas World NOA") (the Global Heresy Hellas World License Agreement and the Global Heresy Hellas World NOA shall hereafter be collectively referred to as the "Global Heresy Hellas World Distribution Agreements"). The Global Heresy Hellas World Distribution Agreements were forged since they were not signed by any Hellas World representative authorized to sign on behalf of Hellas World.

Filmax

67. On or about September 2, 2000, Howsam, through GFT-Heresy, purported to enter into a license

agreement with Sogedasa, under the name Filmax, whereby Filmax appeared to purchase the right to exploit *Global Heresy* within Spain in exchange for the payment of $350,000 by Filmax ("Global Heresy Filmax License Agreement").

68. On or about September 2, 2000, in conjunction with the Global Heresy Filmax License Agreement, Howsam, through GFT-Heresy, purported to enter into an NOA agreement with Filmax, which appeared to assign the payment of a Minimum Guarantee in the amount of $350,000 by Filmax, to Comerica ("Global Heresy Filmax NOA") (the Global Heresy Filmax License Agreement and the Global Heresy Filmax NOA shall hereafter be collectively referred to as the "Global Heresy Filmax Distribution Agreements"). The Global Heresy Filmax Distribution Agreements were forged since they were not signed by Carlos Fernandez, or anyone else authorized to sign on behalf of Sogedasa or Filmax.

Rapi Films

69. On or about September 2, 2000, Howsam, through GFT-Heresy, purported to enter into a license agreement with Rapi Films, whereby Rapi Films appeared to purchase the right to exploit *Global Heresy* within Indonesia in exchange for the payment of $5,000 by Rapi Films ("Global Heresy Rapi Films License Agreement").

70. On or about September 2, 2000, in conjunction with the Global Heresy Rapi Films License Agreement, Howsam, through GFT-Heresy, purported to enter into an NOA agreement with Rapi Films, which appeared to assign the payment of a Minimum Guarantee in the amount of $5,000 by Rapi Films, to Comerica ("Global

Heresy Rapi Films NOA") (the Global Heresy Rapi Films License Agreement and the Global Heresy Rapi Films NOA shall hereafter be collectively referred to as the "Global Heresy Rapi Films Distribution Agreements"). The Global Heresy Rapi Films Distribution Agreements were forged since they were not signed by a Rapi Films representative authorized to sign on behalf of Rapi Films.

Digital Right Pictures Public Co., Ltd.

71. Howsam, through GFT-Heresy, purported to enter into an undated license agreement with Digital Right Pictures Public Co., Ltd. ("Digital Right"), whereby Digital Right appeared to purchase the right to exploit *Global Heresy* within Thailand in exchange for the payment of $20,000 by Digital Right ("Global Heresy Digital Right License Agreement").

72. On or about October 3, 2000, in conjunction with the Global Heresy Digital Right License Agreement, Howsam, through GFT-Heresy, purported to enter into an NOA agreement with Digital Right, which appeared to assign the payment of a Minimum Guarantee in the amount of $20,000 by Digital Right, to Comerica ("Global Heresy Digital Right NOA") (the Global Heresy Digital Right License Agreement and the Global Heresy Digital Right NOA shall hereafter be collectively referred to as the "Global Heresy Digital Right Distribution Agreements"). The Global Heresy Digital Right Distribution Agreements were forged since they were not signed by a Digital Right representative authorized to sign on behalf of Digital Right.

E. The Circle

Loan Agreement, Interparty Agreement, and Sales Agency Agreement

73. Howsam established and controlled GFT Circle Films, Inc. ("GFT-Circle") for the purpose of producing the motion picture *The Circle*.

74. Howsam, through GFT-Circle, entered into a Loan and Security Agreement and an Interparty Agreement, both of which were dated November 24, 2000, with Comerica for the purposes of borrowing $1,700,000 for the production of *The Circle* (these agreements are collectively referred to as "The Circle Loan Agreement"). Copies of the Loan and Security Agreement and Interparty Agreement are attached hereto as Exhibits "I" and "J," respectively. As security for the loan obligations, Howsam and GFT-Circle pledged all of their interest, rights and title to *The Circle* and any and all proceeds generated therefrom to Comerica.

75. Howsam, through GFT-Circle, entered into a Sales Agency Agreement with Hilltop, dated January 30, 2001, pursuant to which Howsam and Circle Films appointed Hilltop as the sales agent for the purposes of entering into license agreements for exploitation of *The Circle* in all territories of the world except for the United States and Canada.

Forged License Agreements and Notices of Assignment

Tele-Munchen

76. On or about February 23, 2001, Howsam, through GFT-Circle, purported to enter into a license

agreement with Tele-Munchen, whereby Tele-Munchen appeared to purchase the right to exploit *The Circle* on the terms set forth therein in exchange for the payment of $100,000 by Tele-Munchen ("The Circle Tele-Munchen License Agreement").

77. On or about February 23, 2001, in conjunction with The Circle Tele-Munchen License Agreement, Howsam, through GFT-Circle, purported to enter into an NOA agreement with Tele-Munchen, which appeared to assign the payment of a Minimum Guarantee in the amount of $100,000 by Tele-Munchen, to Comerica ("The Circle Tele-Munchen NOA") (The Circle Tele-Munchen License Agreement and The Circle Tele-Munchen NOA shall hereafter be collectively referred to as the "Circle Tele-Munchen Distribution Agreements"). The Circle Tele-Munchen Distribution Agreements were forged since they were not signed by Herbert Kloiber or anyone else authorized to sign on behalf of Tele-Munchen.

Videx

78. On or about February 24, 2001, Howsam, through GFT-Circle, purported to enter into a license agreement with Videx, whereby Videx appeared to purchase the right to exploit *The Circle* within the territories of Latin America, including Brazil in exchange for the payment of $115,000 by Videx ("The Circle Videx License Agreement").

79. On or about February 24, 2001, in conjunction with The Circle Videx License Agreement, Howsam, through GFT-Circle, purported to enter into an NOA agreement with Videx, which appeared to assign the payment of a Minimum Guarantee in the amount of

$115,000 by Videx, to Comerica ("The Circle Videx NOA") (The Circle Videx License Agreement and The Circle Videx NOA shall hereafter be collectively referred to as the "Circle Videx Distribution Agreements"). The Circle Videx Distribution Agreements were forged since they were not signed by Cynthia Murray or anyone else authorized to sign on behalf of Videx.

Imperial Films S.A. Notice of Assignment

80. Howsam, through GFT-Circle, entered into a license agreement, with Imperial Films S.A. ("Imperial Films"), whereby Imperial Films purchased the right to exploit *The Circle*, on the terms set forth therein, in exchange for the payment of an amount in excess of $268,200 by Imperial Films.

81. On or about April 11, 2001, Howsam, through GFT-Circle, purported to enter into an NOA agreement with Imperial Films, which appeared to assign the payment of a Minimum Guarantee in the amount of at least $268,200 by Imperial Films, to Comerica ("Circle Imperial Films NOA") The Circle Imperial Films NOA was forged since it was not signed by an Imperial Films representative authorized to sign on behalf of Imperial Films.

PCV S.A.

82. On or about February 23, 2001, Howsam, through GFT-Circle, purported to enter into a license agreement with PCV S.A. ("PCV"), whereby PCV appeared to purchase the right to exploit *The Circle* within Greece in exchange for the payment of $8,000 by PCV ("The Circle PCV License Agreement").

83. On or about February 23, 2001, in conjunction with The Circle PCV License Agreement, Howsam, through GFT-Circle, purported to enter into an NOA agreement with PCV, which appeared to assign the payment of a Minimum Guarantee in the amount of $8,000 by PCV, to Comerica ("The Circle PCV NOA") (The Circle PCV License Agreement and The Circle PCV NOA shall hereafter be collectively referred to as the "Circle PCV Distribution Agreements"). The Circle PCV Distribution Agreements were forged since they were not signed by a PCV representative authorized to sign on behalf of PCV.

F. Road Rage

Loan Agreement, Interparty Agreement, and Sales Agency Agreement

84. Howsam established and controlled GFT Road Rage Films Inc. ("GFT-Road Rage") for the purpose of producing the motion picture *Road Rage*.

85. Howsam, through GFT-Road Rage, entered into a Loan and Security Agreement and an Interparty Agreement, both of which were dated September 20, 1999, with Comerica for the purpose of borrowing up to $1,575,000 for the production of *Road Rage*. This Loan and Security Agreement was thereafter amended, on November 19, 1999, to increase the loan amount by $450,000, to a total of up to $2,025,000 (these agreements are collectively referred to as the "Road Rage Loan Agreement"). Copies of the Loan and Security Agreement and Interparty Agreement are attached hereto as Exhibits "K" and "L," respectively. As security for the loan obligations, Howsam and GFT-Road Rage pledged all of their interest, rights and

title to *Road Rage* and any and all proceeds generated therefrom to Comerica.

86. Howsam, through GFT-Road Rage, entered into a Sales Agency Agreement with Hilltop, dated August 10, 1999, pursuant to which Howsam and GFT-Road Rage appointed Hilltop as the sales agent for the purpose of entering into license agreements for the exploitation of *Road Rage* in all territories of the world except for the United States and Canada.

87. Comerica is presently unaware of any forged License Agreements or NOAs associated with this Film. However, the LSA for this Film contained provisions by which the Production Loan on this Film was cross-collateralized with another of the Films. In fact, most or all of the Films were cross-collateralized with one or more of the other Films. Cross-collateralization involves granting a security interest for one Film in the collateral pledged for one of the other Films. This way, if one of the Production Loans is paid off, the collateral pledged may be applied to pay off another of the Films. All of the Production Loans for Films on the GFT Slate were made within a close time-period, and Comerica generally viewed the Production Loans collectively as related to one another.

88. In making the loan on Road Rage, Comerica relied upon the representations made by the Howsam Parties and others with regard to the other Films. Therefore, to the extent any misrepresentations were made on the other Films, Comerica relied thereon to its detriment in making the Production Loan for Road Rage.

G. Ignition

Loan Agreement, Interparty Agreement, and Sales Agency Agreement

89. Howsam established and controlled GFT/ Redwood Ignition Films, Inc. ("GFT-Ignition") for the purpose of producing, the motion picture *Ignition*.

90. Howsam, through GFT-Ignition, entered into a Loan and Security Agreement and an Interparty Agreement, both of which were dated June 23, 2000, with Comerica for the purposes of borrowing $12,469,121 for the production of *Ignition* (these agreements are collectively referred to as the "Ignition Loan Agreement"). Copies of the Loan and Security Agreement and Interparty Agreement are attached hereto as Exhibits "M" and "N," respectively. As security for the loan obligations, Howsam and GFT-Ignition pledged all of their interest, rights and title to *Ignition* and any and all proceeds generated therefrom to Comerica.

91. Howsam, through GFT-Ignition, entered into a Sales Agency Agreement with Hilltop, dated April 28, 2000, pursuant to which Howsam and GFT-Ignition appointed Hilltop as the sales agent for the purpose of entering into license agreements for the exploitation of *Ignition* in all territories of the world except for the United States, Canada, the United Kingdom, France, Germany, Benelux, Greece and Eastern Europe, among others.

Forged License Agreements and Notices of Assignment

Mesrich Holdings Limited

92. On or about June 21, 2000, Howsam, through GFT-Ignition, purported to enter into a license agreement with Mesrich Holdings Limited ("Mesrich"), whereby Mesrich appeared to purchase the right to exploit *Ignition* within the territories of Italy, among others, in exchange for the payment of $450,000 by Mesrich ("Ignition Mesrich License Agreement").

93. On or about June 26, 2000, in conjunction with the Ignition Mesrich License Agreement, Howsam, through GFT-Ignition, purported to enter into an NOA agreement with Mesrich, which appeared to assign the payment of a Minimum Guarantee in the amount of $450,000 by Mesrich, to Comerica ("Ignition Mesrich NOA") (the Ignition Mesrich License Agreement and the Ignition Mesrich NOA shall hereafter be collectively referred to as the "Ignition Mesrich Distribution Agreements"). The Ignition Mesrich Distribution Agreements were forged since they were not signed by a Mesrich representative authorized to sign on behalf of Mesrich.

FIRST CAUSE OF ACTION – BREACH OF WRITTEN CONTRACT

(Against the Howsam Parties and DOES 1-10)

94. Comerica incorporates paragraphs 1-93 above as though fully set forth herein.

95. For each of the Films, Howsam signed an LSA, an Interparty Agreement, and a Sales Agency Agreement. The LSAs provide the terms under which Comerica loaned

money to the Howsam Parties, and the Interparty Agreements and Sales Agency Agreements provide the order in which the parties involved in producing each of the films will get paid upon delivery of the films.

96. Pursuant to the express terms of the LSAs and the Interparty Agreements, the Howsam Parties agreed to provide valid, enforceable Distribution Agreements and NOAs. Furthermore, pursuant to the terms of the Interparty Agreements and the Sales Agency Agreements, the Howsam Parties agreed that Comerica's loans would be repaid before any other parties claiming an interest in revenue derived from the Films, including, without limitation, revenue from the Minimum Guarantees.

97. In breach of the terms of the LSA for each Film, the Howsam Parties failed to deliver duly executed Distribution Agreements and/or executed NOAs to Comerica. Instead, the Howsam Parties delivered ***forged or counterfeit*** Distribution Agreements and NOAs. Additionally, in breach of the Interparty Agreements and Sales Agency Agreements, Comerica is informed and believes that the Howsam Parties were, and are, making payments to third parties out of revenue derived from the Films, which should have been paid to Comerica.

98. In making its decision to loan the money for each of the Films, Comerica relied upon the forged documents provided to it by the Howsam Parties. However, because the distributors whose signatures were forged or counterfeited never actually purchased the distribution rights to the Films, and never executed the NOAs or related documents, as described above, those distributors never paid Comerica after each of the films was produced and delivered. As a result, more than $20 Million owed to Comerica

by the Howsam Parties was never paid, and Comerica has been damaged by at least that total amount.

99. Comerica has fully performed its duties and obligations under the LSAs and Interparty Agreements, except to the extent it was excused or prevented from doing so by the acts and omissions of the Howsam Parties.

100. In addition, the LSAs, Interparty Agreements, and Sales Agency Agreements contain an implied agreement that each party will conduct itself in good faith and will deal fairly with the other, and, further, that neither party will interfere with or deprive the other of the benefits of the LSAs, Interparty Agreements, and Sales Agency Agreements. Pursuant to those implied covenants, the Howsam Parties had a duty to conduct themselves in accordance with those agreements and not to engage in any action which would deprive Comerica of the benefit of those agreements. Comerica entered into the LSAs and Interparty Agreements, with the understanding and expectation that it would be paid back in full, and in a timely fashion, according to the express terms of the LSAs and Interparty Agreements, and that each loan was fully secured by the License Agreements and related NOAs. Furthermore, as a third party beneficiary of the Sales Agency Agreements, Comerica was entitled to be repaid from revenue derived by each film before any other interested party.

101. By engaging in the acts and omissions alleged herein, the Howsam Parties have breached the covenants of good faith and fair dealing owed to Comerica pursuant to the LSAs, Interparty Agreements, and Sales Agency Agreements, and have acted in bad faith by failing and

refusing, without justification, to perform their duties and obligations under those agreements.

102. On information and belief, Comerica alleges that the Howsam Parties have pursued this course of conduct in bad faith and with the intent to interfere with, injure and frustrate Comerica's enjoyment of the benefits and rights conferred under the terms of the LSAs and Interparty Agreements. Even if the conduct alleged above were adjudged not to amount to a formal breach of the contracts between Comerica and the Howsam Parties, the actions of the Howsam Parties have deprived Comerica of the benefit it sought in entering into the LSAs and Interparty Agreements, and the various other associated agreements.

103. As a direct and proximate result of the aforesaid acts and omissions of the Howsam Parties, Comerica has incurred damages in excess of $20 Million.

104. Pursuant to the LSAs and Interparty Agreements, Comerica is also entitled to recovery of its reasonable attorney's fees incurred in connection with enforcement of its rights under each LSA and Interparty Agreement.

SECOND CAUSE OF ACTION – FRAUD AND DECEIT

(Against the Howsam Parties, Glockler, Bennecke, and DOES 11-35)

105. Comerica incorporates paragraphs 1-93 above as though fully set forth herein.

106. As a material inducement to Comerica to enter into the LSAs and Interparty Agreements, and to lend

money to the Howsam Parties for the production of the Films, the Howsam Parties, Glockler, and Does 11-35, and each of them, represented to Comerica, among other things, that they had sold distribution rights to the various distributors identified above, and had obtained License Agreements and NOAs from those distributors to whom distribution rights had been sold.

107. The true facts, of which Comerica was unaware, were that the Howsam Parties had *not* sold the distribution rights to those distributors, and the distributors had not signed NOAs or License Agreements. Instead, the Howsam Parties, with the assistance of Glockler and Bennecke, delivered forged or counterfeit NOAs to Comerica, upon which Comerica relied in agreeing to lend money to the Howsam Parties to produce the Films.

108. Comerica is further informed and believes, and based thereon alleges, that Howsam and various Does, purposefully and intentionally directed and controlled the Howsam Parties, Glockler, and others, and that those Defendants made the aforesaid false representations with the intent to deceive and induce Comerica to enter into the LSAs and Interparty Agreements, and to loan significantly more money to the Howsam Parties than was actually secured by pre-sales of distribution rights, and significantly more money than was actually necessary to produce the Films.

109. Upon information and belief, Comerica alleges that Bennecke falsely represented to Comerica that he had received, on Comerica's behalf, legitimate License Agreements and NOAs when in fact he had not, and knew that the License Agreements and NOAs identified herein were false and/or forged. Comerica would not have entered into

the LSAs and Interparty Agreements, or have otherwise agreed to loan money to the Howsam Parties with respect to the Films had Comerica known the true facts alleged herein.

110. Furthermore, Comerica is informed and believes that Glockler was responsible for creating and/or obtaining forged and/or counterfeit signatures on the License Agreements and NOAs identified herein. Comerica is informed and believes that Glockler did so on behalf of the Howsam Defendants and at their behest with the intent to defraud Comerica.

111. As a direct and proximate result of the fraudulent representations of the Howsam Parties, Bennecke, Glockler, and others, Comerica has incurred damages in excess of $20 Million. The full nature and extent of these damages, and of the Defendants' fraudulent acts, are presently unknown.

112. On information and belief, Comerica alleges that the Howsam Parties, Bennecke, Glockler, and various Does, and each of them, in doing the things herein alleged, acted willfully, maliciously, oppressively and with full knowledge of the adverse effect of their actions on Comerica, and with willful and deliberate disregard to the consequences to Comerica. As a direct result of the fraudulent, willful and malicious conduct of the Howsam Parties, Bennecke, Glockler, and various Does, and each of them, Comerica is entitled to exemplary and punitive damages against the Howsam Parties in an amount to be determined as appropriate by the trier of fact.

THIRD CAUSE OF ACTION – CONSPIRACY TO DEFRAUD

(Against the Howsam Parties, Bennecke, Glockler, and DOES 11-50)

113. Comerica incorporates paragraphs 1-93, and 106-112 above as though fully set forth herein.

114. Comerica alleges on information and belief that Bennecke, Glockler, the Howsam Parties, and Does 11-50 engaged in a conspiracy to defraud Comerica as described above, and that these defendants reached implicit or explicit agreements with each other to aid in defrauding Comerica. In furtherance of their agreements, these defendants committed the fraud described herein.

115. As a direct and proximate result of the fraudulent representations of the Howsam Parties, Bennecke, and Glockler, Comerica has incurred damages in excess of $20 Million. The full nature and extent of these damages, and of Defendants' fraudulent acts, is presently unknown.

116. On information and belief, Comerica alleges that the Howsam Parties, Bennecke, and various Does, and each of them, in doing the things herein alleged, acted willfully, maliciously, oppressively and with full knowledge of the adverse effect of their actions on Comerica, and with willful and deliberate disregard to the consequences to Comerica. As a direct result of the fraudulent, willful and malicious conduct of the Howsam Parties, Bennecke, Glockler, and various Does, and each of them, Comerica is entitled to exemplary and punitive damages against the Howsam Parties, Bennecke, Glockler, and Does No. 11-50 in an amount to be determined as appropriate by the trier or fact.

FOURTH CAUSE OF ACTION – FRAUDULENT INDUCEMENT

(Against the Howsam Parties, Bennecke, Glockler, and DOES 11-50)

117. Comerica incorporates paragraphs 1-93, and 106-112 above as though fully set forth herein.

118. Comerica is informed and believes that, as a material inducement to Comerica to enter into the LSAs and associated documents, such as the Interparty Agreements, for each Film, the Howsam Parties, Glockler, and Does 11-50, and each of them, represented to Comerica, among other things, that the various License Agreements and NOAs identified herein were legitimate and valid. Furthermore, the Howsam Parties represented that the budgets provided to Comerica were true and accurate representations of the anticipated costs to produce each of the Films. These defendants knew that Comerica was relying upon their representations in entering into each of the LSAs, Interparty Agreements, and related agreements.

119. The aforesaid warranties and representations of the Howsam Parties, Glockler, and Does 11-50 were false and fraudulent. Comerica is informed and believes that Howsam and various Does purposefully and intentionally directed and controlled the Howsam Parties, Bennecke, Glockler, and various Does, and that all Defendants made the aforesaid false representations with the intent to deceive and induce Comerica to enter into the LSAs and Interparty Agreements, and to loan significantly more money that was actually required for the Howsam Parties to produce the Films.

120. Comerica reasonably relied on the warranties and representations of these defendants in agreeing to

enter into the LSAs and Interparty Agreements, and to loan the money to the Howsam Parties. Comerica would not have entered into the LSAs and Interparty Agreements, or otherwise have agreed to provide any loans to the Howsam Parties with respect to the Films, had Comerica known the true facts alleged herein.

121. As a direct and proximate result of the fraudulent representations of the Howsam Parties, Bennecke, Glockler, and Does 11-50, Comerica has incurred damages in excess of $20 Million. The full nature and extent of these damages, and of Defendants' fraudulent acts, are presently unknown.

122. On information and belief, Comerica alleges that the Howsam Parties, Bennecke, Glockler, and various Does, and each of them, in doing the things herein alleged, acted willfully, maliciously, oppressively and with full knowledge of the adverse effect of their actions on Comerica, and with willful and deliberate disregard to the consequences to Comerica. As a direct result of the fraudulent, willful and malicious conduct of the Howsam Parties, Bennecke, Glockler, and various Does, and each of them, Comerica is entitled to exemplary and punitive damages against these defendants in an amount to be determined as appropriate by the trier of fact.

FIFTH CAUSE OF ACTION – ACCOUNTING

(Against the Howsam Parties and Does 95-100)

123. Comerica incorporates paragraphs 1-93 above as though fully set forth herein.

124. As a result of the wrongful action of the Howsam Parties' and Does 95-100, Comerica has not been

paid the amounts owed it under the LSAs. As a result, Comerica is entitled to an accounting of the amount owed it by the Howsam Parties.

125. Additionally, pursuant to the LSAs, the Howsam Parties agreed to provide Comerica with an accurate budget and/or agreed to deliver specific movies with final approved budgets equal to or exceeding various specified amounts.

126. Comerica is informed and believes that these defendants have failed and refused to provide Comerica with an accurate budget for each of the Films. By reason of, inter alia, the Howsam Parties' complete dominion and control over the production and budget of the Films and including all amounts to be allegedly expended in the production of the Films, and the preparation, accounting for and payment of all items on the budgets prepared by the Howsam Parties in connection with the Films, and based on the terms and conditions of the parties' agreements, Comerica is entitled to a full and accurate accounting of the budgets for each Film, and the final actual cost of each Film.

127. Furthermore, Comerica is informed and believes that the Howsam Parties have received payments for license fees from distributors that should have been paid directly to Comerica pursuant to the terms of the LSAs, Interparty Agreements, and Licence [sic] Agreements. Additionally, Comerica is informed and believes that the Howsam Parties paid money to other parties before paying off the loans to Comerica, as they were required to do under the LSAs, Interparty Agreements, and Sales Agency Agreements. As a result, Comerica is entitled to an accounting of all License Fees received from

distributors, all payments made to third parties, and any other money received or paid out prior to paying off the loans on the subject Films.

SIXTH CAUSE OF ACTION – MONEY HAD AND RECEIVED

(Against the Howsam Parties and DOES 1-10)

128. Comerica incorporates paragraphs 1-93 above as though fully set forth herein.

129. Within the last four years, the Howsam Parties became indebted to Comerica in a sum in excess of $20 million for money had and received by said Defendants for the use and benefit of Comerica.

130. The whole of the above sum has not been paid, although demand therefor has been made.

131. There is not due, owing and unpaid from the Howsam Parties to Comerica the sum of not less than $20 million, together with interest as may be provided by law.

SEVENTH CAUSE OF ACTION – ACCOUNT STATED

(Against the Howsam Parties and DOES 1-10)

132. Comerica incorporates paragraphs 1-93 above as though fully set forth herein.

133. Within the last four years, an account was stated by and between Comerica and the Howsam Parties in which it was agreed and understood that said Defendants were indebted to Comerica in a sum in excess of $20 million.

134. The whole of the above sum has not been paid, although demand therefor has been made.

135. There is not due, owing and unpaid from the Howsam Parties to Comerica the sum of not less than $20 million, together with interest as may be provided by law.

EIGHTH CAUSE OF ACTION – OPEN BOOK ACCOUNT

(Against the Howsam Parties and DOES 1-10)

136. Comerica incorporates paragraphs 1-93 above as though fully set forth herein.

137. Within the last four years, the Howsam Parties became indebted to Comerica on an open book account for money due in a sum in excess of $20 million for money lent at said Defendants request.

138. The whole of the above sum has not been paid, although demand therefor has been made.

139. There is not due, owing and unpaid from the Howsam Parties to Comerica the sum of not less than $20 million, together with interest as may be provided by law.

PRAYER FOR RELIEF

WHEREFORE, Comerica prays for judgment against all defendants in this action, jointly and severally, as follows:

AS TO THE FIRST CAUSE OF ACTION:

1. For general damages in a sum of not less than $20,000,000 or an amount according to proof, together with interest thereon at the legal rate;

2. Attorney's fees and costs;

AS TO THE SECOND CAUSE OF ACTION:

3. For general damages in a sum of not less than $20,000,000 or an amount according to proof, together with interest thereon at the legal rate;

4. Exemplary and punitive damages in an amount according to proof at the time of trial;

AS TO THE THIRD CAUSE OF ACTION:

5. For general damages in a sum of not less than $20,000,000, or an amount according to proof, together with interest thereon at the legal rate;

6. Exemplary and punitive damages in an amount according to proof at the time of trial;

AS TO THE FOURTH CAUSE OF ACTION:

7. For general damages in a sum of not less than $20,000,000, or an amount according to proof, together with interest thereon at the legal rate;

8. Exemplary and punitive damages in an amount according to proof at the time of trial;

AS TO THE FIFTH CAUSE OF ACTION:

9. For an accounting of the actual budgets and costs of each of the Films;

AS TO THE SIXTH CAUSE OF ACTION:

10. For damages in a sum of not less than $20,000,000 or an amount according to proof, together with interest thereon at the legal rate;

AS TO THE SEVENTH CAUSE OF ACTION:

11. For damages in a sum of not less than $20,000,000 or an amount according to proof, together with interest thereon at the legal rate;

AS TO THE EIGHTH CAUSE OF ACTION:

12. For damages in a sum of not less than $20,000,000 or an amount according to proof, together with interest thereon at the legal rate;

AS TO ALL CLAIMS FOR RELIEF:

13. For a finding of constructive trust for:

(i) the distribution rights in the territories covered by all License Agreements executed in connection with the Films;

(ii) all revenue derived from the sale of any right in the Films;

(iii) legal title to all of the Films; and

(iv) any other interest in which Comerica should rightfully hold a security interest pursuant to the LSAs and Interparty Agreements;

14. For an injunction precluding the Howsam Parties from transferring legal title during the pendency of this suit to frustrate Comerica's equitable interest in any of the foregoing items held in constructive trust;

15. For all costs of suit incurred herein;

16. For reasonable attorney's fees as may be provided by law;

17. For interest as may be provided by law; and

18. For such other and further relief, including without limitation injunctive relief, as the Court deems to be just and appropriate.

DATED: September 3, 2004

BUCHALTER, NEMER,
FIELDS & YOUNGER
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By: _____
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

COMERICA BANK, a Michigan Banking Corporation,

Plaintiff,

vs.

GARY HOWSAM, an individual; GFT ENTERTAINMENT, INC., and Ontario corporation, also known as GFTE, INC., and previously known as GREENLIGHT FILM AND TELEVISION, INC. D/B/A GFT ENTERTAINMENT; PEACE ARCH ENTERTAINMENT GROUP, INC., an Ontario Corporation; GFT CIRCLE FILMS, INC., an Ontario Corporation; ROAD RAGE FILMS, INC.,

CASE NO. BC316406

OPPOSITION OF COMERICA BANK TO MOTION OF DEFENDANTS GARY HOWSAM AND GREENLIGHT FILM AND TELEVISION, INC. TO QUASH SERVICE OF SUMMONS FOR LACK OF PERSONAL JURISDICTION

[Declarations of Robert S. Addison, Jr., Carmen E. Carpenter, and G. Raymond F. Gross submitted herewith.]

a Corporation of unknown origin; JANUS PRODUCTIONS, INC., a Quebec Corporation; GFT GOING BACK FILMS, INC., an Ontario Corporation; GFT HERESY FILMS, INC., an Ontario Corporation; GFT/REDWOOD KOTN FILMS, INC., a British Columbia Corporation; GFT/REDWOOD IGNITION FILMS, INC., a British Columbia Corporation; ADAM BENNECKE, an individual; MICHEL GLOCKLER, an individual; and DOES 1 through 100, inclusive, Defendants.	Date: December 15, 2004 Time: 8:30 a.m. Dept: 31 Judge: Hon. Andria K. Richey

I. INTRODUCTION AND SUMMARY OF OPPOSITION

Despite their extensive and purposeful contacts with this State in furtherance of a major fraud scheme aimed at Comerica Bank ("Comerica"), defendants Greenlight Film and Television, Inc., D/B/A GFT Entertainment ("Greenlight") and Gary Howsam ("Howsam") both move this Court to quash service of summons for lack of personal jurisdiction. The Motions of Howsam and Greenlight should be denied because this Court has jurisdiction over these two defendants based on the following:

1. Howsam and Greenlight had sufficient contacts with California to justify the exercise of personal jurisdiction;

2. Howsam and Greenlight consented to California jurisdiction; and

3. California has a compelling interest in this action.

In the event that the Court finds insufficient evidence contained within this Opposition, Comerica is entitled to conduct discovery for the purpose of obtaining support for its Opposition.

II. FACTUAL BACKGROUND

A. Howsam Came to California to Obtain Financing From a California Bank.

In 1999 and 2000, Howsam used his company, Greenlight, to seek out and fraudulently obtain film financing from Comerica Bank-California, a California banking corporation.[1] In connection with his fraud scheme, Howsam, both individually and as an officer of Greenlight, personally came to California numerous times to negotiate financing with Comerica for a number of films he planned to produce through Greenlight, including *Deception, Going Back, Kevin of the North, Global Heresy, The Circle, Road Rage* and *Ignition* (collectively, the "Films"). [Declaration of G. Raymond F. Gross (the "Gross Decl."), ¶¶ 3 and 4; Declaration of Carmen E. Carpenter ("Carpenter Decl."), ¶¶ 1-4, and 7.]

The loans, amounting to over $37 million, were negotiated by Howsam in *California*, and were funded

[1] Plaintiff Comerica, a Michigan banking corporation, is the successor in interest to Comerica Bank, a California corporation. [Carpenter Decl. ¶ 4.]

through single purpose corporate entities (the "SPEs"), which were established and controlled by Howsam and Greenlight. [Carpenter Decl., ¶¶ 8-10, Exs. A-N; Gross Decl., ¶¶ 3-4.] Performance of the loan agreements was also due in California. [Carpenter Decl., ¶ 10, Ex's. A-G.] Furthermore, Howsam and Greenlight continue to do business in California, even as recently as November, 2004, when Howsam's successor company to Greenlight, GFT Entertainment, Inc. ("GFT"), was in Santa Monica marketing its films. [Declaration of Robert S. Addison, Jr. ("Addison Decl."), ¶¶ 11 and 12 and Ex's A, K, and M.]

B. Comerica's Borrowers (the SPEs) Are Howsam And Greenlight's Alter Ego Corporations, And Have Consented To California Jurisdiction.

When Howsam first approached Comerica, and during the entire business relationship thereafter, he presented himself as a movie producer seeking financing for a number of films. [Carpenter Decl., ¶ 5.] Typically, when Comerica provides film financing, the producer/borrower provides licensing agreements and an assignment of the minimum guaranteed licensing fees to be paid by distributors, as collateral for the loans. [Carpenter Decl., ¶¶ 8-10.] In connection with the production and financing of films, single purpose corporate entities are created as shell corporations, which become the technical borrowers for each of the subject loans; that is what occurred in this case. [Carpenter Decl., ¶¶ 8-10.]

Howsam personally came to California and negotiated with Comerica personnel, here in Los Angeles, to obtain financing for the Films, which he was producing through his company, Greenlight. [Gross Decl., ¶¶ 3-4; Carpenter

Decl., ¶¶ 1-4, and 7.] During this negotiation process, Howsam and Greenlight created the SPEs – one entity for each of the Films – which were controlled by Howsam and Greenlight. [Carpenter Decl., ¶¶ 8-9.] In fact, Howsam personally signed all the loan documents on behalf of the SPEs, including the Loan and Security Agreements ("LSAs"), which provide that the parties consent to the application of California law, to jurisdiction in this State, and to venue in this Court. [*See* ¶¶ 10.4 and 10.7 of the LSA's, attached as Ex's A through G to the Carpenter Decl.]

Each of the SPEs was owned by Greenlight, or by another corporate entity of which Howsam was the owner and/or officer. [*See*, Carpenter Decl., ¶ 9, Exs. H-N.] Moreover, the SPEs were virtually non-capitalized: for example, GFT Heresy issued a total of ten shares, which were purchased by Greenlight for ten cents per share, for a total of $1. [Carpenter Decl., ¶ 9, Ex. J.] GFT-KOTN and GFT-Ignition each issued 101 shares at ten cents per share and, in both cases, 100 of the shares were purchased by Greenlight (49 shares) and Redwood Films, Inc. (51 shares), both of which are Howsam controlled entities. [Carpenter Decl., ¶ 9, Exs. L, N.]

C. Howsam and Greenlight Committed Fraud By Providing Falsified Loan Collateral to Comerica.

Although the SPEs were the technical borrowers on the Comerica loans, Comerica only funded the loans to the SPEs based on the collateral provided by Howsam and Greenlight, all of which turned out to have been forged by Howsam or at his direction. [Carpenter Decl., ¶ 11-19; Addison Decl., ¶ 13, and Ex's N and O.] Specifically,

Notices of Assignment of licensing fees ("NOAs") were delivered to Comerica, by Howsam and Greenlight, which contained forged signatures. [Carpenter Decl., ¶¶ 14-15; Addison Decl., ¶ 13, Ex's N and O.] As part of its ongoing investigation into this matter, Comerica has obtained declarations by foreign distributors, in which the distributors testify that their signatures were forged on NOAs and other agreements. [Addison Decl. ¶ 13, Ex's N and O.] This forgery and falsification of collateral occurred in California and was clearly directed at a California bank.

Pursuant to the Sales Agency Agreements and the Interparty Agreements, executed by Howsam, the SPEs must pay Comerica before any other creditor, including Hilltop's Harel Goldstein, the sales agent for the Films is paid. [Carpenter Decl., Exs. O-U.] Instead of honoring these agreements, however, prior to the full repayment of Comerica's loans Howsam and Greenlight misused SPE funds that were due to Comerica, by wiring at least $57,000 from the SPEs and GFT to Carole Goldstein (Harel Goldstein's wife), who had no connection to the Films. [Addison Decl., ¶¶ 14 and 15, Ex. P.]

D. GFT Entertainment Inc. Is A Mere Continuation Of Greenlight's Film Production Business, Under a New Name.

In December 2002, the movie business of Greenlight (d/b/a GFT Entertainment) became GFT Entertainment Inc. ("GFT"). [*See* Addison Decl. ¶¶ 3-10, Ex's B through I.] GFT continued to share the same address as Greenlight, at 124 Merton Street, Suite 407 in Toronto, Canada, and, as late as November, 2004, GFT's website listed Greenlight films among its "Completed Productions," including the Films which are the subject of this action. [*See* Addison

Decl. ¶¶ 3-10, Ex's B through I.] In September 2004, GFT again changed its name, this time to Peace Arch Films, but in each case, the same individual – Howsam – is involved in selling the same Films which were financed with the same funds fraudulently obtained from Comerica. [*See* Addison Decl. ¶¶ 9 and 10, Ex's J and L.]

GFT's website, located on the internet at www.gfte.com, lists GFT's address as 124 Merton Street, Suite 407, Toronto, Ontario, Canada. [Addison Decl., ¶ 3.] On the page entitled "Completed Productions," the Films at issue in this case are listed under the heading "Greenlight Film & Television, Inc." [Addison Decl., ¶ 3.] Additionally, for each of these films is a separate web page, listing details of the film's production, including Gary Howsam as producer for all of the Films, and identifying distributors for each film. [Addison Decl., ¶ 3, Exs. B – H.]

In late October or early November 2004, counsel for GFT was informed of the content of GFT's own website by counsel for Comerica. [Addison Decl., ¶¶ 7 and 8.] On November 16, 2004, just two weeks after that conversation, the website had been changed. [Addison Decl., ¶ 9, Ex. K.] Moreover, on September 1, 2004, after the filing of the present action against GFT, GFT Entertainment, Inc. changed its name to Peace Arch Motion Pictures, Inc., and the website now reflects that new name. [Addison Decl., ¶ 9, Ex. J.] Significantly, on the "Completed Productions" website page, the Greenlight films have been removed. [Addison Decl., ¶ 9.]

III. ARGUMENT

A. This Court Previously Found Jurisdiction Over Howsam and Greenlight Under Virtually Identical Circumstances.

Significantly, the issue of the Los Angeles Superior Court's jurisdiction over Howsam and Greenlight in connection with their seeking and obtaining loans from Comerica Bank has *already been litigated and adjudicated*. In late 1999, around the time Howsam and Greenlight were in California to commence the process of defrauding Comerica of $20,000,000, the law firm of Kaye, Scholer, Fierman, Hays & Handler, LLP ("Kaye Scholer") sued Howsam and Greenlight for their failure to pay attorneys fees owed to Kaye Scholer in connection with Howsam's production of the film "*Hellcab*." [Addison Decl., ¶ 16.][1] Under circumstances similar to this case, Howsam and Greenlight hired Kaye Scholer to assist in various corporate matters and to help obtain financing for the production *Hellcab*, which was finally obtained from *Comerica Bank*. [Addison Decl., ¶ 16.]

After Howsam and Greenlight failed to pay their attorneys' fees, Kay Scholer filed suit, in response to which Howsam and Greenlight, through their attorney, Charles M. Coate (Howsam and Greenlight's present counsel), filed a motion to quash for lack of personal jurisdiction. The Los Angeles Superior Court, Department 78, the Honorable Marilyn L. Hoffman presiding, denied Howsam and Greenlight's motion to quash, and ruled that the Court

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[1] Comerica requests the Court take judicial notice of LASC Case No. BC213-970, the pleadings and records on file in that case, and the Orders issued by this Court in that case. [Addison Decl., ¶ 16, Ex. T.]

held specific jurisdiction over both defendants. [Addison Decl., ¶ 16, Ex. T.]

The circumstances of the present case are substantively no different from the Kaye Scholer case. In fact, Howsam and Greenlight's motion in the present case is virtually identical to the motion filed in the Kaye Sholer case. It is indisputable that, in the late 1990's and early 2000's, Howsam and Greenlight were active in California, doing business with California law firms, and obtaining film financing from Comerica, a California bank. [*Carpenter* Decl., ¶¶ 5-7.] This Court previously held Howsam and Greenlight subject to its jurisdiction in connection with disputes arising out of Howsam and Greenlight's California-related business, and the Court should once again rule the same.

B. Howsam And Greenlight Had Sufficient Contacts With California To Justify This Court's Exercise Of Personal Jurisdiction.

California courts may exercise personal jurisdiction over nonresident defendants "on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10.) California's "long-arm" statute "manifests an intent to exercise the broadest possible jurisdiction, limited only by constitutional considerations." (*Sibley v. Super. Ct.*, 16 Cal. 3d 442, 445 (1976) (emphasis added).)

Under the federal Constitutional standards, a state court's assertion of specific personal jurisdiction over a nonresident defendant who has not been served with process within the state requires that the defendant has sufficient "minimum contacts" with the forum such that

"maintenance of the suit does not offend traditional notions of fair play and substantial justice." (*Internat. Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (citations omitted); *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal. 4th 434, 445 (1996).) Specific jurisdiction is determined under a three-part test:

(1) the defendant has purposefully availed itself of forum benefits with respect to the matter in controversy;

(2) the controversy is related to or arises out of the defendant's contacts with the forum; and,

(3) the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.

(*Archdiocese of Milwaukee v. Super. Ct.*, 112 Cal. App. 4th 423, 435-436 (2003).) All three criteria are met in this case.

1. Howsam And Greenlight Purposefully Availed Themselves Of California Benefits.

Nonresident defendants are subject to specific jurisdiction if, by their forum-related contacts, they: (1) purposefully direct activities at forum residents; (2) purposefully derive benefit from forum activities; or (3) purposefully avail themselves of the privilege of conducting activities with the forum state, thus invoking the benefits and protections of its laws. (*See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-475 (1985).) Howsam and Greenlight's activities in California satisfy all three purposeful availment formulations.

a. Howsam And Greenlight Engaged In Intentional Wrongful Conduct Targeting A California Bank.

Under the "effects test," California courts will determine that a defendant has purposefully availed of forum benefits if the defendant engaged in intentional conduct expressly aimed at or targeting the forum state, and the defendant knew the intentional conduct would cause harm in the forum. (*Archdiocese of Milwaukee*, 112 Cal. App. 4th at 436-437.) "The substantial connection between the defendant and the forum state necessary for a finding of minimum contacts must come about by an action of the defendant purposefully directed toward the forum State." (*Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 112 (1987) (citations omitted).) In fact, jurisdiction exists even if the non-resident has not otherwise invoked the benefits and protections of local law. (*See Jamshid-Negad v. Kessler*, 15 Cal. App. 4th 1704, 1708-1709 (1993).)

Here, the evidence clearly supports jurisdiction over both Howsam and Greenlight, due to their purposeful activity aimed at causing harm to Comerica in California. In connection with the loans at issue in this case, Howsam, the *President* of Greenlight, sought out and obtained the loans from Comerica, a California bank, and met with Comerica personnel on many occasions *in California*. [Gross Decl., ¶¶ 3 and 4; Carpenter Decl., ¶¶ 5-7.] Howsam, acting individually and on behalf of Greenlight, presented forged and false collateral to Comerica, *in California*, in order to induce Comerica into funding the loans, of which Howsam and Greenlight obtained the benefit. In addition, Howsam worked intimately with Hilltop Entertainment, LLC, a California company, and its employees and agents, all California residents, to market

and sell the Films. [Gross Decl., ¶¶ 3 and 4; Carpenter Decl., ¶¶ 5-7.] Howsam also signed the loan documents for the subject loans, purportedly on behalf of the SPEs, which were established by Howsam and wholly owned by Greenlight. [Carpenter Decl., ¶ 10.]

b. Howsam And Greenlight Obtained The Benefit Of The Loan Contracts Which Were Negotiated in California.

Although the loans were funded to the SPEs, Howsam and Greenlight obtained the clear benefit of the fraudulently obtained loans and, as such, purposefully availed of California benefits. (*See Burger King Corp.*, 471 U.S. at 475.) All of the SPEs were established to finance the Films and were fully controlled by Howsam and Greenlight. [*Carpenter* Decl. ¶¶ 8-10, Exs. H-N.] Howsam and Greenlight's subsequent marketing efforts were assisted by Hilltop's Harel Goldstein, a California sales agent, and Howsam, both individually and as President of Greenlight, earned a significant amount of money and enhanced his professional reputation by getting the Films made. [Gross Decl., ¶ 4.] In addition, the SPEs were required by the loan agreements to pay Comerica before any other creditor, including Mr. Goldstein. [Carpenter Decl., ¶ 10, Exs. A-G.] Instead of honoring these agreements, however, Howsam and Greenlight misused SPE funds that were due to Comerica. [Addison Decl., ¶ 14.] In 2001, prior to the full repayment of the Comerica loans, Howsam and Greenlight wired at least $57,000 from the SPEs to Carole Bennett Goldstein (Harel Goldstein's wife), who was not hired by Howsam, Greenlight, or the SPEs and, in fact, who had no connection whatsoever to the films. [Addison Decl., ¶ 14 and 15, Ex. P.]

Howsam and Greenlight continue to market and benefit from the Films, and thus there can be no dispute but that Howsam and Greenlight purposefully derived benefit from their contacts with California and from the fraud scheme that they devised and executed here against Comerica.

c. Howsam And Greenlight Negotiated The Loan Contracts In California, Thereby Invoking The Benefits And Protections Of California Law.

Howsam and Greenlight engaged in repeated acts which both California and federal courts have expressly held are sufficient to satisfy the minimum contacts requirements. Specifically, the United States Supreme Court has held that entering into a single contract in the California may subject the contracting party to California jurisdiction. (*McGee v. International Life Ins. Co.*, 355 U.S. 220, 223 (1957).) In *McGee*, the Court held that a single life insurance policy issued to a California resident, and the subsequent collection of premiums on that policy, was enough to support a California court's jurisdiction over a Texas insurer.

In the present case, Howsam and Greenlight negotiated multiple loan agreements with a California bank, *in California*, and made payments thereon, thus giving rise to California jurisdiction over them. [Carpenter Decl., ¶ 15.] In so doing, Howsam and Greenlight communicated on a regular basis with Comerica, its Los Angeles counsel, and its Los Angeles sales agent, via telephone, mail, and e-mail, regarding the details of obtaining the subject loans and the performance of those contracts. [Gross Decl., ¶¶ 3 and 4; Carpenter Decl., ¶¶ 2, 5] (*See Hall v. LaRonde*, 56

Cal. App. 4th 1324, 1344 (1997) [non-resident contacts with California resident via e-mail and telephone resulted in a contract and therefore minimum contacts].) Furthermore, *Howsam signed loan documents, which were sent to Comerica in California.* [Carpenter Decl., ¶ 10.]

The evidence in this case overwhelmingly demonstrates a pattern of activity by Howsam and Greenlight in California, which was directly related to the loans at issue in this action, and was designed to defraud a California bank. Howsam and Greenlight therefore purposefully availed themselves of California benefits and should be subject to this Court's jurisdiction in order that they may be called to account for their actions.

2. Comerica's Claims Arise From Howsam And Greenlight's Forum-Related Activities.

In applying minimum contacts analysis, courts consider those "forum-related activities as they relate to the specific causes of action." (*Gordy v. Daily News*, 95 F. 3d 829, 835 (9th Cir.1996).) "The United States Supreme Court has stated more than once that the nexus required to establish specific jurisdiction is between the defendant, the forum, and the litigation. (*Vons*, 14 Cal. 4th at 458; *citing*, *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 411 (1984).)

In determining the nature of a defendant's activities in the State, California Courts inquire as to whether the quality and nature of the activity in relation to the particular cause of action make it fair to exercise jurisdiction:

> "In analyzing the defendant's activities we must focus upon 'economic reality' rather than a mechanical checklist. ***An enterprise obtains the***

> ***benefits and protection of our laws if as a matter of commercial actuality it has engaged in economic activity within this state.***"

Foster v. Mooney Aircraft Corp., 68 Cal. App. 3d 887, 892 (1977). Moreover, the Court of Appeal has clearly stated that economic activity in the State will satisfy this inquiry:

> "An ***isolated act of economic activity, such as the making and performance of a contract*** in the forum state, may be sufficient to accord the forum state jurisdiction over the defendant when the cause of action is related to that isolated act of economic activity.

(*Sanders v. CEG Corp.*, 95 Cal. App. 3d 779, 784 (1979) (emphasis added).)

Here, Howsam and Greenlight were engaged in economic activity with a California bank, obtained loans by personally negotiating with Comerica personnel *in California*, and defrauded Comerica by misrepresenting material information in connection with the loans. [Carpenter Decl., ¶¶ 10-15.] Comerica brings its claims against Howsam and Greenlight for their actions in committing this fraud and thereby obtaining millions of dollars from Comerica based on forged collateral. [Carpenter Decl., ¶¶ 14 and 15.] The loan agreements resulted from extensive contacts with California, in the negotiation and execution of the loans, and were based on forged and false collateral which was provided by Howsam and Greenlight to Comerica in this State. [Carpenter Decl., ¶¶ 5-7, 14 and 15.] Accordingly, Howsam and Greenlight are subject to this Court's personal jurisdiction because a clear and undeniable nexus exists between their economic activity in California and the resulting claims by Comerica.

3. California Has A Compelling Interest In Providing A Forum For This Action And Fairness Dictates That The Case Proceed In This State.

In extending personal jurisdiction over a non-resident entity, California courts consider additional factors to ensure that the assumption of jurisdiction "does not offend traditional notions of fair play and substantial justice":

> "We consider (1) California's interest in providing a forum for its residents to redress grievances occurring in California, (2) the relative availability of evidence in the various forums, (3) the burden of prosecuting and defending in California as opposed to prosecuting and defending the action elsewhere, (4) the opportunity to avoid a multiplicity of actions and conflicting adjudications by assuming jurisdiction, and (5) the extent to which a plaintiff's cause of action arises out of defendant's local activities."

(*Sanders*, 95 Cal. App.3d at 790.)

Clearly, California has a de facto compelling interest in preventing fraud and in providing a forum to redress Comerica's grievances. At all relevant times to this action, Comerica was a California bank in the business of financing films, an industry for which California has a well-deserved international reputation. All of Comerica's documents in connection with these loans are in California – specifically, in Comerica's Los Angeles offices – and Howsam and Greenlight, through their alter ego SPEs, have consented to jurisdiction here. [Carpenter Decl., ¶ 10, Exs. A-G.]

Howsam and Greenlight are simply wrong in their statement that it would be unreasonable to have this

matter litigated in California due to the location of witnesses and documents. On the contrary, the majority of percipient witnesses in this case are located in California, and a significant number of other witnesses are located in various countries throughout the world. There is quite simply no single location that could possibly suit the convenience of all witnesses, and Howsam and Greenlight's point is therefore unavailing.

By conducting this litigation in California, Comerica can avoid a multiplicity of suits against individuals and entities located in different regions of the United States and Canada. More importantly, this case arises from Howsam and Greenlight's own direct activities within this State, which activities were aimed at harming a California bank and involved repeated contacts with California, and this State therefore has an interest in providing a forum to litigate all matters directly related to those activities. [Carpenter Decl., ¶¶ 2-5.]

C. Howsam and Greenlight Have Consented to California Jurisdiction Through Their Alter Egos – the SPEs.

In connection with the loans, single purpose corporate entities (the "SPEs") were created and controlled by Howsam and Greenlight to act as borrowers. These SPEs should each be disregarded as corporate entities to the extent that they were used by Howsam and Greenlight for the illegitimate purpose of defrauding Comerica. Under the "alter ego doctrine," California courts will disregard a corporate entity in order to exercise jurisdiction over an individual where the corporation is "used to accomplish a fraudulent object." (*First Western Bank & Trust Co. v. Bookasta*, 267 Cal. App. 2d 910, 914 (1968).)

Comerica is suing the parties in this case based upon the Loan and Security Agreements and other loan documents entered into between Comerica and the SPEs. The Loan and Security Agreements expressly provide that California law governs disputes related thereto, that California has jurisdiction over such disputes, and that Los Angeles Superior Court is the proper venue for such disputes. [*Carpenter* Decl., Exs. A-G.] Furthermore, Howsam himself signed the Loan and Security Agreements, purportedly on behalf of the SPEs, and both he and Greenlight furnished fraudulent collateral to induce Comerica to enter those agreements and fund the loans to the SPEs. [*Carpenter* Decl., ¶¶ 10, 14 and 15, and Exs. A-G.]

1. There Was A Unity Of Interest And Ownership Between Howsam, Greenlight And The SPEs.

"There is no litmus test to determine when the corporate veil will be pierced; rather the result will depend on the circumstances of each particular case." (*Mesler v. Bragg Management Co.*, 39 Cal. 3d 290, 300 (1985).) Two sets of circumstances must generally exist, however, for the alter ego doctrine to apply: first, the corporation must be influenced and governed by the individual such that there is "a unity of interest and ownership" between the individual and the entity and their "separateness" has ceased; second, "the facts are such that an adherence to the fiction of the separate existence of the corporation would, under the particular circumstances, sanction a fraud or promote injustice." (*Minifie v. Rowley*, 187 Cal. 481, 487 (1921).)

Here, a clear unity of ownership existed between Howsam, Greenlight and the SPEs. Each of the SPEs was

controlled by Howsam and Greenlight and all were virtually non-capitalized: for example, GFT Heresy issued a total of ten shares, which were purchased by Greenlight for ten cents per share, for a total of $1. [*Carpenter* Decl., Ex. J.] GFT-KOTN and GFT-Ignition each issued 101 shares at ten cents per share and, in both cases, 100 of the shares were purchased by Greenlight (49 shares) and Redwood Films, Inc. (51 shares), both of which are Howsam controlled entities. [*See*, Carpenter Decl., ¶ 9, Exs. L, N.] Howsam and Greenlight established the SPEs for the sole purpose of obtaining the loans by fraudulent means and Howsam personally signed all the loan documents on behalf of the SPEs, including the Loan and Security Agreements. [*See*, Carpenter Decl., ¶¶ 10, 14 and 15.]

Howsam and Greenlight conducted all the negotiations for the loans, and established and fully controlled the SPEs, which were the technical borrowers. [*Carpenter* Decl., ¶¶ 5-9.] Moreover, the SPEs had no assets beyond the Films and the rights to the Films, all of which are now controlled by Howsam, Greenlight and their successors, who continue to obtain the full benefit of the Films. [Carpenter Decl., ¶ 9.] In fact, the "separate" entities only qualified for the film financing loans based on the forged and false collateral that was intentionally provided to Comerica by Howsam and Greenlight. [Carpenter Decl., ¶¶ 14-18.] In further demonstration of their total dominance of the SPEs and their sheer disregard of the obligations of the SPEs under the loan contracts, Howsam and Greenlight misused SPE funds in 2001, by wiring money to Carole Goldstein, the wife of Hilltop's Harel Goldstein, who had no discernable connection to the Films. [Addison Decl., ¶ 14.] The SPEs are therefore inseparable from

Howsam and Greenlight for the purposes of their obligations under the Loan and Security Agreements.

2. An Inequitable Result Will Follow If Howsam And Greenlight Are Not Bound To The Terms Of The Loan and Security Agreements.

The policy behind the alter ego doctrine seeks to hold individuals to account for their wrongful acts, even though those acts were ostensibly done in the corporation's name:

> "The alter ego doctrine arises when a plaintiff comes into court claiming that an opposing party is using the corporate form unjustly and in derogation of the plaintiff's interests. [. . .] ***As the separate personality of the corporation is a statutory privilege, it must be used for legitimate business purposes and must not be perverted. When it is abused it will be disregarded and the corporation looked at as a collection or association of individuals, so that the corporation will be liable for acts of the stockholders or the stockholders liable for acts done in the name of the corporation.***"

(*Minifie*, 187 Cal. at 487, (emphasis added) (internal citations and quotations omitted).)

In this case, the SPEs were not in reality "separate" entities, but were established and controlled exclusively by Howsam and Greenlight for the purpose of defrauding Comerica. Even if the SPEs are deemed legitimate corporations, however, this Court should nonetheless disregard the "separateness" of the SPEs to the extent necessary to bind Howsam and Greenlight to the terms of the Loan and Security Agreements that were signed by Howsam. (*See Automotriz etc. de California v. Resnick*, 47 Cal. 2d 792,

796 (1957) [California courts will disregard the "separateness" of corporate entities where the shareholder is using the corporations for an illegitimate purpose and "an inequitable result will follow" if the acts of the individual shareholder are treated as those of the corporation alone].)

The Loan and Security Agreements were only entered into by Comerica in reliance on the forged collateral *that Howsam and Greenlight provided*. [Carpenter Decl., ¶ 14.] Thus there can be no doubt that an inequitable result will follow if Howsam and Greenlight are allowed simultaneously to bind the SPEs to jurisdiction in California, by means their own fraud, and still evade such jurisdiction themselves. Permitting Howsam and Greenlight to evade their responsibility in this way would clearly sanction fraud and promote injustice, and this court should not countenance such a result.

D. Comerica Is Entitled to Conduct Discovery To Establish Minimum Contacts.

Although Comerica has presented a substantial amount of proof of Howsam and Greenlight's minimum contacts with California, there are other witnesses, including these defendants, who have knowledge of their activities in California. Furthermore, these defendants created a complex series corporate creation and re-creation, evidence of which is in their possession. Therefore, to the extent that this Court feels Comerica has not provided sufficient proof that Howsam and Greenlight engaged in sufficient minimum contacts with California to warrant the exercise of personal jurisdiction, or that the claims alleged in this action arose from those activities, Comerica respectfully requests a continuance from this Court to

conduct sufficient discovery to establish minimum contacts.

"Where jurisdiction is challenged by a non-resident defendant, the burden of proof is upon the plaintiff to demonstrate that 'minimum contacts' exist between the defendant and the forum state to justify imposition of personal jurisdiction." (*Mihlon v. Super. Ct.*, 169 Cal. App. 3d 703, 710 (1985).) It is well-settled that the plaintiff is entitled to conduct discovery on the jurisdictional issues presented by a defendant's motion to quash and, if unable to complete such discovery before the hearing on the motion, is entitled to a continuance for this purpose. (*See School Dist. of Okaloosa County v. Super. Ct.* (*City of Orange*), 58 Cal. App. 4th 1126, 1131 (1997).

IV. CONCLUSION

Comerica respectfully requests that Howsam and Greenlight's Motion be denied and that these defendants be ordered to appear and respond to Comerica's First Amended Complaint.

DATED: December 3, 2004

BUCHALTER, NEMER, FIELDS & YOUNGER
A Professional Corporation
Michael L. Wachtell

By: /s/ Robert S. Addison
Robert S. Addison, Jr.
Attorneys for Plaintiff
COMERICA BANK,
a Michigan Banking Corporation

BUCHALTER, NEMER, FIELDS & YOUNGER
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Attorneys for Plaintiff
COMERICA BANK, a Michigan Banking Corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

COMERICA BANK, a Michigan Banking Corporation,

Plaintiff,

vs.

GARY HOWSAM, an individual; GFT ENTERTAINMENT, INC., an Ontario corporation, also known as GFTE, INC., and successor to GREENLIGHT FILM AND TELEVISION, INC. D/B/A/ GFT ENTERTAINMENT; GREENLIGHT FILM AND TELEVISION, INC. D/B/A/ GFT ENTERTAINMENT, an Ontario Corporation; GFT CIRCLE

CASE NO. BC316406

DECLARATION OF ROBERT S. ADDISON, JR. IN SUPPORT OF COMERICA'S OPPOSITIONS TO:

1. GREENLIGHT AND HOWSAM'S MOTION TO QUASH;

2. GREENLIGHT AND HOWSAM'S MOTION TO STAY OR DISMISS;

3. GFT ENTERTAINMENT'S MOTION TO QUASH; AND

4. THE SPES' MOTION TO COMPEL ARBITRATION

FILMS, INC., an Ontario Corporation; ROAD RAGE FILMS, INC., a Corporation of unknown origin; JANUS PRODUCTIONS, INC., a Quebec Corporation; GFT GOING BACKFILMS, INC., an Ontario Corporation; GFT HERESY FILMS, INC., an Ontario Corporation; GFT/REDWOOD KOTN FILMS, INC., a British Columbia Corporation; GFT/REDWOOD IGNITION FILMS, INC., a British Columbia Corporation; ADAM BENNECKE, an individual; MICHEL GLOCKLER, an individual; and DOES 1 through 100, inclusive, Defendant.	Date: December 15, 2004 Time: 8:30 a.m. Dept: 31 Judge: Hon. Andria K. Richey

DECLARATION OF ROBERT S ADDISON, JR.

I, Robert S. Addison, Jr., declare as follows:

1. I am an attorney duly licensed to practice law in the State of California, and an associate attorney with the law firm of Buchalter, Nemer, Fields & Younger, a Professional Corporation ("BNFY"), attorneys of record for Plaintiff Comerica Bank ("Comerica"). I am personally familiar with the facts set forth herein, either from my own knowledge or from my review of the files and records regarding this action. If called upon to testify in this action

as to matters set forth herein, I could and would competently testify thereto.

2. As one of the attorneys assigned to handle this litigation, I have possession, custody, supervision and control of BNFY's records and documents relating to this action. I state that the records and documents referred to in this Declaration constitute writings taken or made in the regular or ordinary course of business of BNFY at or near the time of the act, condition or event to which they relate by persons employed by BNFY who had a business duty to BNFY to accurately and completely take, make and maintain such records and documents.

GFT's Website Claims Greenlight Films As Its Own

3. On October 22, 2004, I viewed and printed a number of web pages from defendant GFT Entertainment, Inc.'s ("GFT") website, located on the internet at www.gfte.com. True and correct copies of those pages are attached hereto as Exhibits "A" through "H." The heading at the top of the web page lists GFT's address as 124 Merton Street, Suite 407, Toronto, Ontario, Canada. On the page entitled "Completed Productions," the films at issue in this case, The Circle, Deception, Global Heresy, Going Back, Ignition, Kevin of the North, and Road Rage (collectively the "Films"), are listed under the heading "Greenlight Film & Television, Inc. [See Exhibit "A."] Additionally, for each of these films is a separate web page, listing details of the film's production, including Gary Howsam as producer for all of the Films, and identifying distributors for each film. [See Exhibits "B" through "H."]

4. Also on GFT's website is a web page, as of July 1, 2004, providing a biography of Gary Howsam. A true and

correct copy of that web page is attached hereto as Exhibit "I." Notably, on that web page, GFT makes no distinction between GFT and Greenlight, when it states: "In 1997, Gary Howsam founded Greenlight Film & Television Inc. (d/b/a GFT Entertainment). As CEO of GFT, he is forging independent production partnerships with international filmmakers and financiers. Based in Toronto, the company and its affiliates develop, produce, finance and distribute feature films."

After Being Advised of the Content of GFT's Website, GFT Changed the Website, Removing the Greenlight Films

5. In late October or early November, 2004, I received a letter from James M. Kilkowski, Esq., counsel for GFT, in which Mr. Kilkowski requested that GFT be dismissed from the present action. On or about November 8, 2004, I spoke with Mr. Kilkowski by telephone. He asked me if I had read his letter and whether Comerica would be dismissing GFT from the present action. I told him I had read his letter, but that we would not be dismissing GFT because GFT is the successor entity to defendant Greenlight and is the alter ego of Gary Howsam.

6. Mr. Kilkowski stated that Greenlight was still in business, and therefore GFT could not be its successor entity. I then asked Mr. Kilkowski to name a movie that Greenlight has produced in the last few years, to which he replied that Greenlight was now in television production and no longer produced movies. I told him I was aware of that, and that is exactly the reason GFT is Greenlight's successor entity. Specifically, upon its creation, GFT

simply carried on Greenlight's movie production business, while Greenlight focused only on television production.

7. Mr. Kilkowski then asked me why I believed GFT had carried forward with Greenlight's movie business. I responded by telling him that GFT's own website listed Greenlight's prior movie productions, including the seven movies at issue in this case, as "Completed Productions," and the biographical information regarding Gary Howsam on GFT's own website did not distinguish between GFT and Greenlight. Also, I advised him that, at the time GFT was formed, Howsam was aware that Comerica had learned of the fraud involved in the seven subject films, and Comerica believes Howsam formed GFT as the successor company to Greenlight as part of a plan to shield Greenlight's and his own assets from liability in connection with that fraud.

8. Mr. Kilkowski then asked me which website I was referring to when I stated that GFT had listed Greenlight's films for sale as "Completed Productions," and I told him www.gfte.com. He said he would look into that allegation.

9. On November 16, 2004, just two weeks after my conversation with Mr. Kilkowski, I viewed the www.gfte.com website, and it had been changed. On September 1, 2004, after the filing of the present action against GFT, GFT Entertainment, Inc. changed its name to Peace Arch Motion Pictures, Inc., and the website now reflects that new name. A true and correct copy of the press release announcing the name change is attached hereto as Exhibit "J." More significantly, however, on the "Completed Productions" page, the Greenlight films have been removed. True and correct copies of printouts of

GFT's "Completed Productions" web page, viewed on November 16, 2004, is attached here to as Exhibit "K."

10. Although the six films at issue in this case have been removed from the "Completed Productions" page of GFT's website, they remain listed under the "Recent Production Credits" web page of Gary Howsam on GFT's website. A true and correct copy of that web page is attached hereto as Exhibit "L."

GFT Marketed its Films at the America Film Market in Santa Monica, California in November, 2004

11. On November 2, 2004, I viewed the website of Peace Arch Entertainment Group, Inc. ("Peace Arch"), located on the internet at www.peacearch.com. On that website was an announcement that Peace Arch would be present at the American Film Market ("AFM"), in Santa Monica, California, from November 3-10, 2004, and a listing of the films to be screened and marketed there, including *The Good Shepherd*, *Hollywood Flies*, and *The Keeper*. A true and correct copy of this web page is attached hereto as Exhibit "M." Those three films were listed on GFT's website in October, 2004, as Completed Productions, and remain listed there on GFT's new website (under GFT's new name, "Peace Arch Films"). [See Exhibits "A" and "K."]

12. On November 5, 2004, I personally went to the AFM at the Loews Hotel in Santa Monica, California, and I saw the Peace Arch suite on the seventh floor of the hotel.

Foreign Distributors Provided Declarations Proving the Forged Documents

13. In the course of our investigation into the fraud perpetration upon Comerica, attorneys in my firm spoke with foreign film distributors who claimed that their signatures on various documents, including Deal Memos, Distribution Agreements, and Notices of Assignment ("NOAs") had been forged. Those same distributors provided sworn declarations attesting to the forgeries. Attached hereto as Exhibits "N" and "O" are two such declarations. I am in possession of a [sic] four-inch binder full of additional such declarations from a the [sic] foreign distributors identified in Comerica's First Amended Complaint, who claim that their signatures were forged, and can provide the same to the Court if necessary.

GFT and GFT Borrowers Made Regular, Large Payments to Carole Goldstein, the Wife of Harel Goldstein

14. Also in the course of our investigation into the fraud perpetrated upon Comerica, and in connection with the bankruptcy filed Harel and Carole Bennett Goldstein, my firm caused bank records of Carole Goldstein to be subpoenaed from Bank of America. Among those records, are statements listing a number of large wire transfers from GFT Entertainment, GFT Circle Films, Inc., and GFT Redwood KOTN Films, Inc. to Carole Goldstein's bank account at Bank of America. These funds transfers include, among others, the following:

(a) 12,000.00 from GFT Circle Films, Inc. on April 4, 2001;

(b) 15,000.00 from GFT Circle Films, Inc. on May 9, 2001;

(c) 10,000.00 from GFT Circle Films, Inc. on June 8, 2001;

(d) 8,000.00 from GFT Redwood KOTN Films, Inc. on June 19, 2001; and,

(e) 12,500.00 from GFT Entertainment, Inc. on July 26, 2002.

15. True and correct copies of the subpoena for the above records, the Declaration of Bank of America's Custodian of Records, and the specific pages identifying the above-referenced funds transfers are attached hereto collectively as Exhibit "P."

Kaye Scholer v. Howsam and Greenlight

16. I searched the Los Angeles County Superior Court's online records and discovered that Howsam and Greenlight were sued in late 1999 by the law firm of Kaye, Scholer, Fierman, Hays & Handler, LLP ("Kaye Scholer"), LASC Case No. BC213-970, for fees allegedly owed Kaye Scholer by Howsam and Greenlight in connection with Kaye Scholer's services provided to assist Howsam and Greenlight obtain [sic] financing from Comerica Bank for the film Hellcab. In response to Kaye Scholer's Complaint, Howsam and Greenlight, through their attorney, Charles M. Coate (Howsam and Greenlight's present counsel), filed a motion to quash for lack of personal jurisdiction. True and correct copies, which I downloaded off the Court's website, of that motion, Kaye Scholer's Opposition thereto,

and the Declaration of Ronald L. Liebow in support of Kaye Scholer's Opposition, in which he testifies to Howsam and Greenlight's obtaining financing from Comerica for Hellcab, are attached hereto as Exhibits "Q" through "S," respectively. The Los Angeles Superior Court, Department 78, the Honorable Marilyn L. Hoffman presiding, denied Howsam and Greenlight's motion to quash, and ruled that the Court held specific jurisdiction over both defendants. A true and correct copy of the Court's Minute Order denying Howsam and Greenlight's Motion to Quash, which I also downloaded off of the Court's website, is attached hereto as Exhibit "T."

Potential Witnesses

17. Among the many potential witnesses who may provide testimony in this case are the following people and their respective cities of residence (this is not a complete witness list):

Mishell Glockler	Los Angeles, CA
Lynn Mooney	Los Angeles, CA
David Pasternak	Hawthorne, CA
Mark Victor	Santa Monica, CA
Michael Grais	Santa Monica, CA
Carole Goldstein	Calabasas, CA
Harel Goldstein	Calabasas, CA
G. Raymond F. Gross	Los Angeles, CA
Thomas L. Harnsberger	Los Angeles, CA
Carmen Carpenter	Los Angeles, CA
Morgan Rector	Los Angeles CA
Marco Massoni	Los Angeles, CA
Adam Bennecke	Upland CA
Nathan J. Hochman	Beverly Hills, CA
D. Jeffrey Andrick	Beverly Hills, CA

Additionally, the many foreign distributors identified in Comerica's First Amended Complaint, who are located throughout Europe and Latin America, and whose signatures were forged on the relevant loan documents, are all potential witnesses. Furthermore, huge volumes of documents and records are maintained in California by Comerica and by the California-based witnesses.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December 3, 2004, at Los Angeles, California.

Robert S. Addison, Jr.

EXHIBIT N

DECLARATION OF SUNNY SAMTANI

I, SUNNY SAMTANI, declare as follows:

1. I am, and at all times relevant hereto have been, the Production Executive of Rapi Films, a company duly established and existing under the laws of Indonesia, with its principal place of business in Jakarta, Indonesia, and have held that position since 1990. As such, I have possession, custody, supervision and control of the files of Rapi Films. The following facts are true of my own personal knowledge except where indicated on information and belief, and as to those matters, I believe them to be true. If called upon to do so, I could and would testify competently to the truth thereof.

2. The records and documents of Rapi Films referenced herein constitute writings taken or made and maintained in the regular and ordinary course of business of Rapi Films at or near the time of the act, condition or event to which they relate by persons employed by Rapi Films who had a business duty to Rapi Films, respectively, to accurately and completely take, make and maintain such records and documents.

3. Rapi Films regularly makes records of all acts related to the contracts it enters into, including all distribution agreements, international multiple rights deal memos, license agreements, and notice of assignment agreements, at or near the time they occur. The sources of information and Method and time of preparation of the records are such that the absence of a record of a particular act, condition, or event is a trustworthy indication that it did not occur.

4. I have reviewed Rapi Films' files and records with respect to Rapi Films' relations with Hill Top Entertainment LLC ("Hilltop") prior to making this declaration.

5. At all times relevant hereto, I have been a person authorized to approve and sign contracts on behalf of Rapi Films pertaining to the acquisition of distribution rights to motion pictures and to the assignment to other parties of Rapi Films' payment obligations under those distribution rights contracts. The only other person authorized to approve and sign such agreements on behalf of Rapi Films is my colleague, Gope Samtani, who has held the title of Chief Executive Officer of Rapi Films at all times relevant hereto.

6. Rapi Films has in the past entered into motion picture distribution agreements with Hilltop. In connection with these agreements, Rapi Films has entered into various types of agreements with Hilltop, which include international multiple rights deal memos and notice of assignment agreements, I have reviewed the document entitled "AFMA International Multiple Rights Deal Memo," dated September 2, 2000, (a true and correct copy of which is attached hereto and marked as Exhibit "A"), which purports to be an agreement between Rapi Films, as distributor, and Hilltop, as licensor, pertaining to the motion picture *Global Heresy*. Neither the original nor a copy of Exhibit "A" is contained in the business record files of Rapi Films. Rapi Films did not enter into any agreement with Hilltop to purchase distribution rights pertaining to *Global Heresy*. On Exhibit "A," in the signature block for Rapi Films, is a signature that purports to be a signature that I placed on this document. I did not sign Exhibit "A" or authorize my signature to be placed on this

document, and it was not signed by any person authorized to do so on behalf of Rapi Films.

7. I have reviewed the document entitled "Notice and Acknowledgment of Assignment," dated September 2, 2000, (a true and correct copy of which is attached hereto and marked as Exhibit "B"), which purports to be an agreement between Rapi Films, as distributor, GFT Heresy Films Inc. ("GFT") as licensor, Hilltop, as agent for GFT, and Comerica Bank – California ("Comerica Bank"), pertaining to the motion picture, *Global Heresy*. Neither the original nor a copy of Exhibit "B" is contained in the business record files of Rapi Films. Rapi Films did not enter into any agreement with Hilltop to assign to Comerica Bank, Rapi Films' purported payment obligations for the purchase of motion picture distribution rights pertaining to *Global Heresy*. On page seven of Exhibit "B," in the signature block for Rapi Films, is a signature that purports to be a signature that I placed on this document. I did not sign Exhibit "B" or authorize my signature to be placed on this document, and it was not signed by any person authorized to do so on behalf of Rapi Films.

8. I have reviewed the agreement entitled "AFMA International Multiple Rights Deal Memo," dated October 17, 1999 (a true and correct copy of which is attached hereto and marked as Exhibit "C") which was entered into between Rapi Films, as distributor, and Hilltop, as licensor, through which Rapi Films purchased certain distribution rights to *Road Rage*. I did sign Exhibit "C," on behalf of Rapi Films. Exhibit "C" or a copy thereof is contained in Rapi Films' business record files. Based upon my review of Exhibits "B" and "C," it appears to me that the signature in the signature block for Rapi Films on Exhibit "B," is a

copy or forgery of the signature which I placed on Exhibit "C."

I declare under penalty of perjury under the laws of the State of California and under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed this 24th day of February, 2003, at Los Angeles, California.

/s/ Sunny Samtani
SUNNY SAMTANI

EXHIBIT O

DECLARATION OF MESRICH HOLDINGS LIMITED

We, the undersigned Mr. Andrés M. Sánchez and Mrs. Miriam E. Rivera, on behalf of I.P.S. Management Ltd., Sole Director of Mesrich Holdings Limited, declare as follows:

1) We are the directors of the company Mesrich Holdings Limited, with registered offices at P.O. Box 3175, Road Town, Tortola, British Virgin Islands.

2) We are aware of the fact that during the year 2000 Hilltop Entertainment LLC (hereinafter "Hilltop") started with our company a negotiation regarding the distribution of a movie titled "IGNITION".

This negotiation was never finalized and Mesrich Holdings Limited did not purchase, or agree to purchase from Hilltop, or from any other third party, the rights pertaining to the movie titled "IGNITION".

3) One year later Mesrich Holdings Limited received a fax (document attached hereto in copy under No 1) from GFT Entertainment showing a request for funds regarding the distribution of the movie titled "IGNITION".

Mesrich Holdings Limited replied to this request declaring that negotiation started with Hilltop terminated in July 2000 without success, and therefore there were no obligations whatsoever due by Mesrich Holdings Limited to Hilltop, nor to any third party, regarding the movie titled "IGNITION".

Copy of this document was also sent to Comerica Bank California, indicated by GFT as assignee bank, to the attention of Mrs. Carmen Carpenter, (document attached hereto in copy under No 2).

4) Thereafter Mesrich Holdings Limited never received any further document or request regarding the film titled "IGNITION", until September 2003, when a letter was sent to Mesrich Holdings Limited care of our law firm by Comerica's Bank-California solicitors (document No 3).

A copy of a Notice and Acknowledgement of Assignment was attached to said letter where a supposed signature of a representative of Mesrich Holdings Limited appears.

Mesrich Holdings Limited never entered into this agreement; our company was not even aware of the existence of this document until the letter received from the solicitors of Comerica Bank-California.

No representative of Mesrich Holdings Limited did not ever sign this document and we strongly believe that the signature on this agreement is untrue.

5) Considering the facts indicated above, we declare that Mesrich Holdings Limited did not purchase or agree to purchase any rights pertaining to the film "IGNITION", and furthermore that the signature on the Notice and Acknowledgement of Assignment is not ours or of any authorized representative of the company.

We declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed September 25, 2003

/s/ Andrés M. Sanchez Miriam E. Rivera
Andrés M. Sánchez and Miriam E. Rivera
On behalf of I.P.S. Management Ltd.

BUCHALTER, NEMER, FIELDS & YOUNGER
A Professional Corporation
Michael L. Wachtell (SBN: 47218)
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Attorneys for Plaintiff
COMERICA BANK, a Michigan Banking Corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

COMERICA BANK, a Michigan Banking Corporation,

Plaintiff,

vs.

GARY HOWSAM, an individual; GFT ENTERTAINMENT, INC., an Ontario corporation, also known as GFTE, INC., and previously known as GREENLIGHT FILM AND TELEVISION, INC. D/B/A/ GFT ENTERTAINMENT; PEACE ARCH ENTERTAINMENT GROUP, INC., an Ontario Corporation; GFT CIRCLE FILMS, INC., an Ontario Corporation; ROAD RAGE FILMS, INC., a Corporation of unknown origin; JANUS PRODUCTIONS, INC., a Quebec Corporation;

CASE NO. BC316406

DECLARATION OF CARMEN E. CARPENTER IN SUPPORT OF COMERICA'S OPPOSITIONS TO:

1. GREENLIGHT AND HOWSAM'S MOTION TO QUASH;

2. GREENLIGHT AND HOWSAM'S MOTION TO STAY OR DISMISS;

3. GFT ENTERTAINMENT'S MOTION TO QUASH; AND

4. THE SPES' MOTION TO COMPEL ARBITRATION

Date: December 15, 2004
Time: 8:30 a.m.

GFT GOING BACKFILMS, INC., an Ontario Corporation; GFT HERESY FILMS, INC., an Ontario Corporation; GFT/REDWOOD KOTN FILMS, INC., a British Columbia Corporation; GFT/REDWOOD IGNITION FILMS, INC., a British Columbia Corporation; ADAM BENNECKE, an individual; MICHEL GLOCKLER, an individual; and DOES 1 through 100, inclusive, Defendant.	Dept: 31 Judge: Hon. Andria K. Richey

DECLARATION OF CARMEN E. CARPENTER

I, Carmen E. Carpenter, declare and state as follows:

1. I am a Vice President for Comerica Bank ("Comerica"). In my capacity as Vice President, I am one of the custodians of the books, records, and files of Comerica ("Records") as they pertain to the loans made which are the subject of the action herein, including documents and copies of documents created by and/or provided to Comerica. I am thoroughly familiar with the manner in which the Records are prepared and maintained. The Records are prepared and maintained in the ordinary course of Comerica's business by duly authorized employees who have personal knowledge of the act, condition, or event being recorded and who have a business duty to so record such matters at or near the time of their occurrence. The Records are prepared in such a manner as to be thoroughly reliable. As of the date hereof, I have reviewed the Records, including those created by, and those

provided to, Comerica, as they pertain to loans made by Comerica for the production of films entitled: *The Circle, Deception, Global Heresy, Going Back, Ignition, Kevin of the North, and Road Rage* (the "Films"). As to the following facts, I know them to be true either of my own personal knowledge or have gained knowledge of them from my knowledge of Comerica's Records. If called upon to testify in this action as to the matters set forth herein, I could and would testify competently thereto.

2. In my capacity as Vice President for Comerica, I am engaged in the day-to-day management of a portfolio of clients for the Bank's entertainment group. In that regard, I am the bank officer supervising the loans made to the single purpose corporate entities, which were the borrowers of the production loans made for the Films ("GFT Borrowers" or "SPEs"). I succeeded to this position, supervising the loans made to the GFT Borrowers, in August, 2001, when my predecessor Adam Bennecke ("Bennecke") left the Bank. Prior to August, 2001, Bennecke was primarily responsible for supervising and documenting the loans with Howsam. At the time the first loan with a GFT Borrower was made, in September, 1999, I was working at Comerica. From that time until August, 2001, I observed Bennecke maintain regular contact with Gary Howsam ("Howsam") in connection with Comerica's financing of the Films. Specifically, I observed Bennecke regularly on the phone with Howsam, I saw letters and e-mails exchanged between Bennecke and Howsam, and on a number of occasions I saw Howsam in our office in Los Angeles meeting with Bennecke and others.

3. Also, during the period from 1999 to 2001, I attended regular portfolio meetings at which Bennecke was present, and during which Bennecke would provide

regular updates and reports on the loans being made by Comerica to finance the Films.

4. In approximately early 2001, Comerica Bank-California, a California Corporation, with which I was employed, merged with Imperial Bank, and became Comerica Bank-California, a California Corporation. Subsequently, Comerica Bank-California merged with Comerica Bank, a Michigan Banking Corporation, which it remains today. After the merger between Imperial Bank and Comerica Bank-California, I began working for Morgan Rector, who had come in from the Imperial Bank side. In or around March and April of 2001, Mr. Rector, Bennecke, and I met weekly to review loans, including the ones for the Films. After a short time, Mr. Rector told me that he was concerned that Bennecke had lost control over the subject loans, and he asked me to monitor the loans and take over the administration of them if necessary. Within the next few months, I occasionally engaged in communications with Howsam. In August, 2001, Bennecke left Comerica, and I became the main contact for Howsam at Comerica.

Gary Howsam and Greenlight/GFT

5. Comerica's primary contact for each of the GFT Borrowers was, and remains, Howsam, a Canadian film producer. During the time period in which the Films were financed and produced, Howsam was the president of Greenlight Film and Television, Inc. d/b/a GFT Entertainment ("Greenlight"). Based upon my conversations with Howsam during that time period, the written correspondence between Howsam and Comerica, and the fact that the names of most of the SPEs begin with "GFT,"

Howsam's film production company was primarily known to Comerica as "GFT."

6. Attached hereto as Exhibits "V" through "Z" are true and correct copies of letters and emails between GFT, Comerica, and Hilltop Entertainment, LLC. These are but a tiny sampling of the hundreds of pages of correspondence to and from Howsam related to his business dealings with Comerica in California. Letters from Gary Howsam, such at [sic] the ones attached hereto, were almost invariably on "GFT Entertainment" letterhead, and frequently addressed multiple loans and Films within a single letter.

7. During the period of time during which the Films were produced and financed, Howsam was a sizeable customer of Comerica. He sought and obtained financing for numerous films he was producing during that time, in addition to the Films at issue in this case. Also, in the process of arranging the financing for the subject loans, Comerica personnel, including Adam Bennecke, myself, and others, met personally with Howsam, spoke with Howsam on the phone on a regular basis, and exchanged extensive e-mails and written correspondence. I also attended the annual American Film Markets, held in Santa Monica, California, during that time, and saw, and sometimes met with, Howsam, who was also there.

Howsam's SPEs – The GFT Borrowers

8. Howsam controls each of the GFT Borrowers, which are:

(a) GFT Circle Films, Inc. ("GFT-Circle"), which is a single purpose entity formed for the

purpose of producing the motion picture *The Circle*;

(b) Janus Productions Inc. ("Janus"), which is a single purpose entity formed for the purpose of producing the motion picture *Deception*;

(c) GFT Heresy Films, Inc. ("GFT-Heresy"), which is a single purpose entity formed for the purpose of producing the motion picture *Global Heresy*;

(d) GFT Going Back Films, Inc. ("GFT-Going Back"), which is a single purpose entity formed for the purpose of producing the motion picture *Going Back*;

(e) GFT/Redwood Ignition Films, Inc. ("GFT-Ignition"), which is a single purpose entity formed for the purpose of producing, the motion picture *Ignition*;

(f) GFT/Redwood KOTN Films, Inc. ("GFT-KOTN"), which is a single purpose entity formed for the purpose of producing the motion picture *Kevin of the North*;

(g) Road Rage Films, Inc. ("Road Rage Films"), which is a single purpose entity formed for the purpose of producing the motion picture *Road Rage*.

9. Among the many documents required by Comerica for the loans for each Film, the corporate records detailing the formation of each SPE was provided to Comerica by Howsam. True and correct copies of those corporate records are attached hereto as Exhibits "H" through "N," respectively. Gary Howsam was the president of Greenlight, and was an officer of each of the GFT Borrowers. The majority or all of the shares in each of the GFT

Borrowers were owned by Greenlight, or by another corporate entity of which Howsam was the owner and/or officer. For example, GFT Heresy issued a total of ten shares, which were purchased by Greenlight for ten cents each. GFT-KOTN and GFT-Ignition each issued 101 shares at ten cents per share. In both cases, 100 of the shares were purchased by Greenlight (49 shares) and Redwood Films, Inc. (51 shares), both of which are Howsam controlled entities.

The Loan and Security Agreements

10. Howsam, through each of the GFT Borrowers, entered into Loan and Security Agreements with Comerica for each of the Films, as follows:

(a) On November 24, 2000, for the purposes of borrowing $1,700,000 for the production of *The Circle*, Howsam signed The Circle Loan Agreement on behalf of GFT-Circle. As security for the loan obligations, Howsam and GFT-Circle pledged all of their interest, rights and title to *The Circle* and any and all proceeds generated therefrom to Comerica.

(b) On November 27, 1999, for the purpose of borrowing up to $1,775,000 for the production of *Deception*, Howsam signed the Deception Loan Agreement on behalf of Janus. As security for the obligations under the Deception Loan Agreement, Howsam and Janus pledged all of their interest, rights and title to *Deception* and any and all proceeds generated therefrom to Comerica.

(c) On October 10, 2000, for the purposes of borrowing up to $4,425,000 for the production of *Global Heresy*, Howsam signed the Global Heresy Loan Agreement

on behalf of GFT-Heresy. As security for the loan obligations, Howsam and GFT-Heresy pledged all of their interest, rights and title to *Global Heresy* and any and all proceeds generated therefrom to Comerica.

(d) On April 7, 2000, for the purpose of borrowing up to $4,764,000 for the production of *Going Back*, Howsam signed the Going Back Loan Agreement on behalf of GFT-Going Back. As security for the obligations under the Going Back Loan Agreement, Howsam and GFT-Going Back, pledged all of their interest, rights and title to *Going Back* and any and all proceeds generated therefrom to Comerica.

(e) On June 23, 2000, for the purposes of borrowing US $12,469,121 for the production of *Ignition*, Howsam signed the Ignition Loan Agreement on behalf of GFT-Ignition. As security for the loan obligations, Howsam and GFT-Ignition pledged all of their interest, rights and title to *Ignition* and any and all proceeds generated therefrom to Comerica.

(f) On May 30, 2000, for the purposes of borrowing $10,428,000 for the production of *Kevin of the North*, Howsam signed the KOTN Loan Agreement on behalf of GFT-KOTN. As security for the KOTN Loan Agreement, Howsam and GFT-KOTN pledged all of their interest, rights and title to *Kevin of the North* and any and all proceeds generated therefrom to Comerica.

(g) On September 20, 1999, for the purposes of borrowing $1,575,000 for the production of *Road Rage*, Howsam signed the Road Rage Loan Agreement on behalf of Road Rage Films. As security for the Road Rage Loan Agreement, Howsam and Road Rage Films pledged all of

their interest, rights and title to *Road Rage* and any and all proceeds generated therefrom to Comerica.

True and correct copies of these Loan and Security Agreements are attached hereto as Exhibits "A" through "G," respectively.

COLLATERAL FOR THE GFT LOANS

11. Comerica's collateral for each of the production loans made to the GFT Borrowers was made up of, in part, assignments to Comerica of minimum guaranteed licensing fees to be paid by foreign distributors for each of the Films. Howsam and his agents were responsible for delivering executed License Agreements, Deal Memos, and Notices of Assignment ("NOAs") (collectively, the "Collateral Agreements"). The Collateral Agreements were supposed to be signed by the foreign distributor who was purchasing, in advance, the distribution rights to a given Film. By the Licensing Agreements, the distributor was guaranteeing it would pay a minimum licensing fee for the subject Film. The NOAs are absolutely critical to Comerica's decision to extend the loans because the NOAs amend and supersede the License Agreements, which are executed between the foreign distributors and the GFT Borrowers. The NOA is the document that creates a direct obligation from the distributor to Comerica. Without an NOA, there is no guarantee of payment of the license fees to Comerica, and Comerica, therefore, would not agree to extend a loan. All of the production loans to the GFT Borrowers were made within a close time-period, and Comerica generally viewed those loans collectively as related to one another.

HOWSAM HIRED HILLTOP ENTERTAINMENT, LLC AS HIS SALES AGENT FOR THE FILMS

12. As part of the process of obtaining financing for the Films from Comerica, a California bank, Howsam hired Hilltop Entertainment, LLC ("Hilltop"), a California company, as his sales agent to market the Films and obtain the Collateral Agreements on his behalf. The primary contact at Hilltop in connection with the Films and the related loans was Harel Goldstein. I have met Mr. Goldstein, and I have also met his wife, Carole Bennett Goldstein.

13. The sales agency agreement between Howsam and Hilltop was memorialized in Sales Agency Agreements between Hilltop and the GFT Borrowers, pursuant to which Hilltop was appointed as the sales agent for the purposes of entering into license agreements for exploitation of each of the Films in all territories of the world except for the United States and Canada. True and correct copies of each of the Sales Agency Agreements are attached hereto as Exhibits "O" through "U," respectively.

The Forged Collateral Agreements

14. As a condition of making a production loan to a GFT Borrower, Comerica required assignments of the GFT Borrower's right to receive the license fees from the foreign film distributors. These assignments, on which Comerica relied to make a loan to each of the GFT Borrowers, were (or were to have been) memorialized in a contractual document entitled "Notice and Acknowledgment of Assignment" ("NOA"), entered into by Comerica, Hilltop and/or the GFT Borrower, a bond company, and, purportedly, the foreign distributor for each territory in

which the Film was purportedly sold, and which were delivered to Comerica by Howsam and his agents. Comerica entered into the Loan and Security Agreements for each of the Films in specific reliance upon the NOAs provided to it by Howsam.

15. Although some of the agreed-upon license fees were paid by distributors on the subject loans, in or around the early Summer of 2001, Comerica and I began to receive, from many of the purported foreign distributors of the Films, refusals of, or questions concerning, payment request notices sent by the Bank to these foreign distributors for collection of the assigned license fees. Comerica, in seeking to clear up the confusion concerning these refusals to pay, presented to the foreign distributors, copies of the respective contracts submitted to Comerica by Hilltop and/or Howsam, and represented to the Bank as being signed by the respective foreign distributors. When presented with copies of the contract(s) with signatures attributed to them, and which had been provided to Comerica (purportedly on their respective behalf), the foreign distributors disavowed the signatures attributed to them, and/or claimed such signatures were forged. Each of these foreign distributors firmly contended that they had never reached such agreements with Hilltop to purchase the Film and/or Films purported to have been purchased by them.

Howsam's Connection to the Fraud

16. As a result of the sheer number of these forged agreements, Comerica and I began to suspect that Hilltop and its employees were involved in, or knew facts concerning, the apparent fraud committed with regard to the

Films. We then shared our suspicions with Howsam, and asked him if he knew anything about such fraud. Howsam both professed surprise at the apparent fraud, and denied knowing anything about it, including whether Harel Goldstein and/or Hilltop were involved.

17. Also in the Summer of 2001, soon after the Bank inquired of Hilltop, and raised its suspicions, concerning the validity of contracts which had been rejected by many of the foreign distributors who had purportedly bought rights in the Films, Harel Goldstein appeared at Comerica's Entertainment Group offices, where I work, in Beverly Hills, California. Harel Goldstein told Adam Bennecke and I that he understood the seriousness of the situation, but he apologized for not being able to discuss matters related to the Films and the fraud, on the grounds that he had been told by his attorneys not to discuss the facts concerning the situation with us. He then began to cry while telling us that he had children and a family.

18. In early 2003, I attended the American Film Market, in Santa Monica, California. At that time, Morgan Rector, President of the Entertainment Group, and I met with Howsam, to discuss the outstanding loan balances for the Films, owed by Howsam's SPEs, and Comerica's ongoing efforts to recover its substantial damages caused as a result of the fraud with the Films. In particular, we advised Howsam of rumors we had been hearing that Goldstein was still doing business in the film industry. Howsam responded by complaining about what a bad situation Goldstein had put him in, and how Goldstein's actions had almost cost him his business. Howsam then told us that he heard from Goldstein from time to time, who would ask him for money and would request to do business together. I found the idea of Goldstein asking

Howsam for money to be inexplicable, and inconsistent with Howsam's prior statements regarding the circumstances Goldstein put Howsam in. Howsam's SPEs, and potentially Howsam's production company, GFT Entertainment, and himself personally, were now on the hook for millions of dollars in unpaid loan balances due to forged contracts submitted during the loan process. We asked Howsam why Goldstein would be contacting calling him, asking for money, and seeking to do more business together, but Howsam could not explain why Goldstein would do so, and Howsam denied having given Goldstein any business or money since the discovery of the fraud.

19. I have since learned that Howsam and Goldstein continue to conduct film production business together, and that tens of thousands of dollars were being paid on a regular basis to Goldstein's wife by Howsam's company, GFT Entertainment, and by some of the GFT Borrowers.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration is executed on December 3, 2004, in Beverly Hills, California.

Carmen Carpenter

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Attorneys for Plaintiff
COMERICA BANK, a Michigan Banking Corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

COMERICA BANK, a Michigan Banking Corporation,

Plaintiff,

vs.

GARY HOWSAM, an individual; GFT ENTERTAINMENT, INC., an Ontario corporation, also known as GFTE, INC., and previously known as GREENLIGHT FILM AND TELEVISION, INC. D/B/A GFT ENTERTAINMENT; PEACE ARCH ENTERTAINMENT GROUP, INC., an Ontario Corporation; GFT CIRCLE FILMS, INC., an Ontario Corporation; ROAD RAGE FILMS, INC.,

CASE NO. BC316406

DECLARATION OF G. RAYMOND F. GROSS IN SUPPORT OF COMERICA'S OPPOSITIONS TO:

1. GREENLIGHT AND HOWSAM'S MOTION TO QUASH;

2. GREENLIGHT AND HOWSAM'S MOTION TO STAY OR DISMISS;

3. GFT ENTERTAINMENT'S MOTION TO QUASH; AND

4. THE SPES' MOTION TO COMPEL ARBITRATION

a Corporation of unknown origin; JANUS PRODUCTIONS, INC., a Quebec Corporation; GFT GOING BACK FILMS, INC., an Ontario Corporation; GFT HERESY FILMS, INC., an Ontario Corporation; GFT/REDWOOD KOTN FILMS, INC., a British Columbia Corporation; GFT/REDWOOD IGNITION FILMS, INC., a British Columbia Corporation; ADAM BENNECKE, an individual; MICHEL GLOCKLER, an individual; and DOES 1 through 100, inclusive, Defendant.	**ARBITRATION** Date: December 15, 2004 Time: 8:30 a.m. Dept: 31 Judge: Hon. Andria K. Richey

DECLARATION OF G. RAYMOND F. GROSS

I, G. Raymond F. Gross, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California, and I am an attorney with the law firm of Gipson, Hoffman & Pancoine ("GHP"). I am personally familiar with the facts set forth herein, either from my own knowledge or from my review of the files and records regarding this action. If called upon to testify in this action as to matters set forth herein, I could and would competently testify thereto.

2. During the period of approximately January, 1999 to August, 2001, GHP was retained as counsel for Comerica Bank in connection with Comerica's entertainment

finance business. In the ordinary course and scope of my duties as counsel for Comerica, I was responsible for working with Comerica bank officers and Comerica's film finance customers to negotiate, document and execute loan agreements. During that process, I sometimes met in person with Comerica loan officers and Comerica's customers/borrowers.

3. From the fall of 1999 until early 2001, I met on at least five occasions, in Los Angeles, California, with Gary Howsam ("Howsam"), a movie producer who obtained film production loans from Comerica. Seven such loans were made in connection with the films entitled *The Circle*, *Deception*, *Global Heresy*, *Going Back*, *Ignition*, *Kevin of the North*, and *Road Rage* (the "Films"). In addition to the meetings I had with Mr. Howsam in California regarding the loans for the Films, I frequently spoke with Mr. Howsam by telephone, exchanged extensive e-mails and written correspondence with Mr. Howsam regarding the loans, and received necessary documentation for each loan from Mr. Howsam. During that same time period, I also worked with Howsam on other Comerica financing deals, and, on at least one occasion, in early 2000, I accompanied Mr. Howsam to the premier [sic] of one of his films (not one of the Films listed above) in Santa Monica, California.

4. In connection with the loans for the Films, I also had contacts with Harel Goldstein of Hilltop Entertainment, LLC ("Hilltop"), which was the California-based sales agent hired by Howsam's companies to market films to various distributors around the world. Since Hilltop was selling the distribution rights to the Films, and since the minimum guaranteed license fees to be paid by those distributors constituted a portion of the collateral for Comerica's loans to Howsam's companies, it was necessary

for me to communicate fairly regularly with Howsam, and, to a lesser extent, with Hilltop during the process of documenting and closing the loans for each of the Films.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on December ___, 2004, at Los Angeles, California.

G. Raymond F. Gross

Supreme Court, U.S.
FILED
SEP 27 2005
OFFICE OF THE CLERK

(3)

No. 05-229

In The
Supreme Court of the United States

GARY ~~HOWSAM,~~ a Canadian national and GREENLIGHT FILM & TELEVISION INC., an Ontario, Canada corporation,

Petitioners,

v.

SUPERIOR COURT OF THE COUNTY OF LOS ANGELES,

Respondent,

COMERICA BANK, a Michigan corporation,

Real Party In Interest.

On Petition For A Writ Of Certiorari To The Supreme Court Of California

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REPLY TO OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

CHARLES M. COATE, Counsel of Record, COSTA ABRAMS & COATE, LLP 1221 Second Street, Third Fl. Santa Monica, California 90401 Tel: (310) 576-6161

Counsel for Petitioners

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I. Introduction

Petitioners are not alone in decrying an arbitrary and contradictory conflating of the policies underlying the application of the alter ego doctrine with one's constitutional right of due process to be free from the unreasonable assertion of jurisdiction over one's person. Indeed, one noted commentator recently having reviewed the application of the alter ego doctrine in relation to the exercise of jurisdiction throughout the Federal Circuits and the State Courts of this country has described it as "ambiguous" and "unprincipled." Lonny S. Hoffman, The Case Against Vicarious Jurisdiction, (2004) 152 University of Pennsylvania Law Review 1023, 1081. Indeed, Professor Hoffman in his article presciently described the manner in which the instant record has unfolded: "the corporate law doctrine of veil piercing ...may be misused in a manner that produces jurisdictional determinations that are neither sound nor necessary. The line between reasoned analysis and rudderless doctrine is difficult to identify and easy to cross." (Id. at 1027). Such a line has been crossed in this case. Under the circumstances, Petitioners respectfully submit that given the arbitrary application in which the alter ego doctrine is applied in jurisdictional contexts throughout the Federal Circuits and State Courts of this Country, including by the State of California in this case, warrants the guidance of this Court in order to prevent the abusive exercise of jurisdiction by the State in an arbitrary and unconstitutional manner.

Therefore, this honorable Court should grant this petition for certiorari because it raises unique issues of jurisdiction as well as international sovereignty, comity, and conflict of laws between the United States and

Canada. Indeed, the notion of excising specific jurisdiction based solely on imputed or vicarious conduct eviscerates the jurisdictional concept of fair warning which is intended to give "a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 [62 L. Ed. 2d 490, 100 S. Ct. 559] (1980). Accordingly, Petitioners respectfully request that the instant petition for certiorari be granted.

II. There Is No Evidence That Petitioners Committed Fraud in California

Comerica brazenly declares that Petitioners committed fraud in California. However, Comerica readily admits that "Petitioners did not enter into any contracts with Comerica." (Oppo. at p. 7). Rather, "consistent with [Real Party in Interest's] normal business practices, [Comerica Bank] required [Petitioners] to create the SPEs ... for each film, which entities then became the borrowers for each of the subject loans." (Oppo. at p. 5). In short, the very deal structure that was admittedly created at the behest of Comerica now serves as the basis of its novel theory that these SPEs were fraudulently conceived at conception and its corresponding alter ego theory. Comerica's direct participation in the required creation of these entities turns alter ego theory on its head and renders Comerica as a willing and knowing participant in the creation and capitalization of these entities. Yet, the State of California is a willing adherent in Comerica's novel approach to an ever expanding and elastic concept of how far the alter ego doctrine may be stretched to secure jurisdiction over an international defendant.

Despite such telling admissions on Comerica's part, it has somehow convinced the State of California to assert personal jurisdiction over Canadians that it readily admits it had no contractual privity with, nor sought. Indeed, the State of California has re-drafted the parties' agreements after the fact at the behest of this very sophisticated Plaintiff. The facts which belie the application of personal jurisdiction in violation of the due process clause of the U.S. Constitution cannot be stated more succinctly than by Comerica itself.

Indeed, the paltry evidence relied upon by Comerica distilled to its essence is that Petitioners have been to California and that 2 distribution contracts may have or appear to have been signed by others than the distributors. However, from the trial court's order denying the motion to quash it does not even appear to rely upon the inconclusive statements from said foreign distributors. Nor, does the foregoing, even if relied upon, in anyway establish jurisdiction, let alone by a preponderance of the evidence, the standard governing the instant jurisdictional question. Comerica also weakly argues on one hand that the SPEs were established by Petitioners to facilitate funding of the loans, yet on the other, readily admits that it was Comerica, not Petitioners which required such SPEs to be established. (Oppo. at p. 5). Moreover, Comerica now makes much of the purported undercapitalization of such SPEs as further evidence of the purported fraud (Oppo. at p. 6), yet readily admits that it reviewed the capitalization of each such SPE "among the many documents required by Comerica for the loans for each film," in other words before each loan was made. (Oppo. at p. 90) Clearly, capitalization or undercapitalization did not concern Comerica at the time the loans were made and it can hardly be relied upon as evidence of a fraud in the

inception when it was fully disclosed to Comerica before any funding of the subject loans occurred. Mere bluster and saber rattling cannot suffice for evidence in hailing international defendants into a U.S. Court in connection with a transaction to which they were not parties. Correspondingly, Petitioners respectfully request that the instant petition for certiorari be granted.

III. Absent Guidance from This Court, The Indeterminacy of The Alter Ego Doctrine as applied by Federal and State Courts such as California for Jurisdictional Purposes renders the Due Process Clause unreasonably and unconstitutionally vague.

For years innumerable judicial commentators have been searing in their criticism of the alter ego doctrine. "Unprincipled," Frank H. Easterbrook & Daniel R. Fischel, Limited Liability and The Corporation, 52 U. Chi. Law Review 89, 89 (1985); "defying any attempt at rational explanation," Jonathan M. Landers, A Unified Approach to Parent, Subsidiary and Affiliate Questions in Bankruptcy, 42 U. Chi. Law Review 589, 620 (1975); "dysfunctional," Steven M. Bainbridge, Abolishing Veil Piercing, 26 J. Corp. L. 479, 506 (2001); and "not entirely comprehensible" Philip I. Blumberg, The Law of Corporate Groups: Procedural Problems in the Law of Parent and Subsidiary Corporations (1983) are just some of the kind words that have been used to describe this doctrine. The formulation of the tests for veil piercing varies widely by jurisdiction, as some are based on common law, some on vague equitable standards, some on statute. For example, the leading case in California *Assoc. Vendors, Inc. v. Oakland Meat Co.*, 26 Cal. Rptr. 806, 815 (Cal. Ct. App. 1962) looks to whether there was a failure to maintain minutes or adequate corporate records, was there a disregard of legal formalities and did two related entities use the same office or business location among

other factors. On the other hand, for example, in the Seventh Circuit, unjust enrichment may alone suffice. *Sea-Land Servs., Inc. v. Pepper Source*, 993 F. 2d 1309, 1312 (7th Cir. 1993).

The wide divergence in veil piercing rules applied throughout Federal and State Courts inevitably leads to an indeterminacy in the standards for veil piercing among such jurisdictions, including California, such that the precedents applying the amorphous doctrine are in fact not precedents at all. As Professor Hoffman observed, "Business planners are left unable to give guidance on how a business and its owners may avoid liability. Litigants and courts are forced to struggle on their own with the law's scattershot approach to defining when the corporate shield may be disregarded." Lonny S. Hoffman, The Case Against Vicarious Jurisdiction, (2004) 152 University of Pennsylvania Law Review 1023, 1077. This aggressive expansion and scattershot application of this doctrine for jurisdictional purposes without limit or definition renders the Due Process Clause effete and without effect to be trumped on every occasion. Indeed, the fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign," [*Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring in judgment)], and degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297, that the due process clause is to otherwise provide is turned on its head on the mere allegation that an unjust result will obtain.

World-Wide Volkswagen's concept of fair warning particularly applicable to disputes involving foreign nationals will be easily mooted by the mere talismanic

assertion of alter ego allegations if this decision is permitted to stand. Similarly, this Court's long recognition of the unique and substantial burdens placed upon foreign nationals defending themselves in a foreign country will be gutted if the State of California's decision is left undisturbed. Indeed, this Court's holding that such circumstances should carry significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders will be rendered meaningless in the event jurisdiction is permitted over Petitioners in this case. Despite clear precedent that in every case involving an international defendant, the procedural and substantive interests of other nations in a state court's assertion of jurisdiction, as well as the "Federal interests in Government's foreign relations policies, will be best served by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State, the decision before the Court stands such precedent on its head. In sum, the 'Great care and reserve [that] should be exercised when extending our notions of personal jurisdiction into the international field.' " *Asahi Metal Industry Co. v. Superior Court,* 480 U.S. 102, 115 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987); quoting *United States v. First National City Bank,* 379 U.S. 378, 404 (1965) (Harlan, J., dissenting) will be ignored if the State of California's expansion of the alter ego doctrine is permitted to stand. Accordingly, Petitioner respectfully requests that the instant Petition For Certiorari be granted in its entirety.

CONCLUSION

Weighing all the factors, California's assertion of personal jurisdiction over Petitioners upon a stretched and tortured application of the alter ego doctrine is neither fair nor reasonable and would not comport with the requirements of the Due Process clause of the federal Constitution. Petitioners do not maintain an ongoing or continuous relationship with California and have not purposefully injected themselves into the forum state's affairs. To the contrary, Petitioners have structured their transactions with Comerica to do business in Canada, not the jurisdiction of California. Petitioners are not parties to any agreements with Comerica, they are not personal guarantors of the loans, and they never consented to being subject to jurisdiction in California.

Personal jurisdiction should not be exercised based solely upon theories of imputed and vicarious conduct such as alter ego and conspiracy against foreigners who purposefully structured their contractual arrangements with the plaintiff to avoid being haled into court in California. Comerica could have easily provided for jurisdiction over the Petitioners in the lengthy and extensive loan documents, security agreements, interparty agreements and other documents that were executed as a condition for making the loans. The fact that Comerica, a bank with sophisticated legal representation, did not so provide, makes it patently unreasonable to hale Petitioners into California based solely on allegations of imputed conduct. The State of California should not be improperly enlisted as the scriveners for a new agreement with Petitioners that never existed previously. The Petitioners

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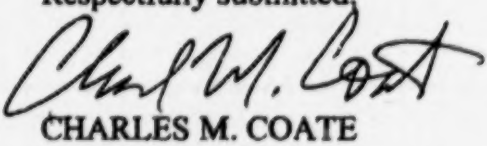
respectfully request that their petition for certiorari be granted.

9/27/05

Respectfully submitted,



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